UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 20-12791 (LGB)

Adv. Case No. 23-01000 (LGB)

- x

In the Matter of:

PB LIFE AND ANNUITY CO., LTD., et al.,

Debtors in Foreign Proceedings.

- x

JOHN JOHNSTON, as Joint Provisional Liquidator on behalf of PB LIFE AND ANNUITY CO., LTD., et al.,

Plaintiffs,

v.

GREGREY EVAN LINDBERG a/k/a GREG EVAN LINDBERG, et al.,

Defendants.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004-1408

Tuesday, September 24, 2024

10:00 AM

B E F O R E :

HON LISA G. BECKERMAN

U.S. BANKRUPTCY JUDGE

ECRO: K.S.

HEARING re Oral Argument on Motions to Dismiss

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

CONDON TOBIN SLADEK THORNTON
Attorneys for Defendants
8080 Park Lane, Suite 700
Dallas, TX 75231

BY: JARED PACE
AARON TOBIN

EVERETT GASKINS HANCOCK TUTTLE HASH LLP
Attorneys for Defendant
Edwards Mill Asset Management LLC
P.O. Box 911
Raleigh, NC 27602

BY: MICHAEL BYRNE
JAMES M. HASH

STEVENS & LEE LLP

Attorneys for the JPLs, John Johnston and Edward Willmott

485 Madison Avenue, 20th Floor

New York, NY 10022

BY: NICHOLAS F. KAJON

CONSTANTINE D. POURAKIS

WADE D. KOENECKE

BEST & FLANAGAN LLP

Attorneys for Pavonia Life Insurance Company of Michigan and Axar Capital Management LP

60 South Sixth Street, Suite 2700

Minneapolis, MN 55402

BY: BRIAN J. LINNEROOTH

JOHN A. SULLIVAN

P R O C E E D I N G S

THE COURT: You may be seated. For the record, Case Number 23-01000, Johnston, et al. v. Lindberg, et al. May I have appearances of counsel in the courtroom, please?

MR. PACE: Good morning, Your Honor. My name is Jared Pace. I'm at the law firm of Condon Tobin in Dallas. My law partner, Aaron Tobin, is with me as well.

We represent 763 defendants who are identified at exhibit -- I'm sorry, ECF 151. There's two exceptions to that. ECF 259, there were some parties in our group that have been dismissed. Those are the Eye Care Leader parties who are in bankruptcy. And then at ECF 314, there's another group of parties, the UCAP parties, that have also been dismissed. They were previously part of our representation.

We also have filed a motion to withdraw as counsel from 572 defendants. Those are identified on Exhibit 1 at 506, and we would stay in for 181 defendants. Those are identified on Exhibit 2 at 506. That's not set for today. Mr. Kajon filed a statement saying he, I think, has no opposition to our withdrawal so long as it doesn't delay today's proceedings, and we're okay with that. I intend to argue for all the defendants we briefed on behalf of.

THE COURT: Okay. So guess we'll get through -- Let me just get through appearances.

MR. PACE: Sure.

THE COURT: And then we can talk about that, Mr. Pace. How about that?

MR. PACE: Sure. Thank you, Your Honor.

THE COURT: Okay. All right.

MR. HASH: Good morning, Your Honor. My name is James Hash and we're with my partner, Michael Byrne. We're from the Wake County, North Carolina bar. Unlike Mr. Pace, we only represent one client and that is defendant Edwards Mill Asset Management LLC.

THE COURT: Okay. Thank you.

MR. LINNEROOTH: Good morning, Your Honor. Brian Linnerooth and John Sullivan, Best & Flanagan, and we represent Pavonia Life Insurance Company of Michigan and Axar Capital Management Limited Partners.

THE COURT: Okay. All right.

MR. KAJON: Good morning, Your Honor, and it's a pleasure to appear in person for the first time in a very long time.

THE COURT: I know, after all these years.

MR. KAJON: Yes.

THE COURT: Three and a half years on the bench and never seen you all, either you or Mr. Pace, either, in person.

MR. KAJON: It's a strange world. Anyway.

THE COURT: It is.

MR. KAJON: Nicholas F. Kajon, of Stevens & Lee, on behalf of the JPLs, John Johnston and Edward Willmott, who are plaintiffs in this adversary proceeding. I'm joined here by my partners, Wade Koenecke to my right, and Constantine Pourakis on the end, and we also have a client representative with us in court today, Martinis Dreier, a director at Deloitte's Bermuda office.

THE COURT: Okay. Thank you.

MR. KAJON: Thank you.

THE COURT: Okay. I guess I'll ask, is there anybody on the Zoom that wishes to appear? Okay. All right. So, Mr. Pace, going back to your motion for withdrawal.

MR. PACE: (Indiscernible)

THE COURT: Sorry. No, that's okay. I was going to deal with it actually last today for the reasons that you just said, that it shouldn't be impacting this hearing. And I have a couple of questions about it. But I thought that would do -- we would do that last.

If it's all right with you all, I thought we would start first with the, I guess, motion to join in the complaint because whether or not I'm going to allow that or not depends on who you're arguing for a little bit today, I suppose. In the arguments and the motions to dismiss, there are three parties that you filed this motion to join in and

adopt, and there was opposition to that.

So I'm going to deal with that first, and then I'm going to hear, obviously, the motions to dismiss that were filed by both the parties and the arguments on both sides for that, and then we'll get to the motion for withdrawal at the end, if that's -- that's the way I would proceed today. All right.

MR. PACE: Okay. Makes sense.

THE COURT: All right. Okay. So I've read the papers for the request to join in and then the opposition to it, and I'll just say that I generally agree with a lot of what the plaintiffs' papers indicated here, just in terms of the procedure for it.

I do think that this is like a Rule 55 proceeding, I believe, where you need to actually challenge them, the default that was entered into it. But the one thing I don't agree with the plaintiffs on is that that requires leave for me to do. I've looked at our local rules. I've looked at the cases that were cited in the papers by the parties, none of which are in our district. I've looked at our circuit, our district court rules and I don't see anything about that that requires that either in the bankruptcy court or the district court here in the Southern District of New York for someone to do that. So I don't see why I would require that here.

So I do think what the appropriate process would be first is I'm not going to allow you to join in and adopt the motion to dismiss because I find that the plaintiffs', right in light of the default having been entered by the court, that that's not appropriate unless the defaults were set aside. And there may be -- as you know, the standard for setting aside default is not small. It has to be pled in the motion. But I don't think you need leave from me to file that motion. So you may go ahead.

And so today, when you're arguing, you're not arguing for in terms of them joining in this pleading for AYC Holdings, LLC, CAF Holdings, LLC and Standard Advisory Services Limited. So just note that for the record, and you are free to file a motion with respect to the default. And obviously you'll have an opportunity to oppose it based on whatever you're going to allege the good cause was for the default and proceed from there. But that's how we're going to proceed today. All right.

MR. PACE: Thank you, Your Honor.

THE COURT: Okay. All right. I guess I will ask the parties, the defendants who filed the motions, Mr. Pace, my inclination would be, for the defendants' counsel, that I would just hear first the argument on behalf of Mr. Pace and all the clients and then let you join in subsequently, make any arguments you wish to subsequent to that if they're not

covered in his arguments. You're free to raise your own issues. And then Mr. Kajon, his side will have their opportunity to oppose both the motions and then we'll have reply, time for somebody to issue -- to argue some response. Okay.

All right. I guess I'll turn the actual podium over to you, Mr. Pace, then.

MR. PACE: Thank you, Your Honor.

THE COURT: Okay.

MR. PACE: I'll do my best to -- I know the court has read everything, probably multiple times and probably more than we have all read.

THE COURT: What's that noise?

MR. PACE: Is it me? The microphone?

THE COURT: No, I don't know. That doesn't sound good. Let's see if that's going to stop. Okay. It seems like it stopped for the moment. If not, we're going to have to call our tech people. Sorry. This has happened before, but usually not from that podium or this. We've had it from that microphone. We've had witnesses, but I haven't had it this way. But let's try and see if it doesn't go away.

MR. PACE: Okay. So we filed our motion to dismiss --

THE COURT: Nope, that doesn't sound good.

MR. PACE: It's got to be me, right?

THE COURT: It's not you, I'm sure.

MR. KAJON: Oh, it's you, Jared.

THE COURT: Okay. All right. So we need to reach out to Keith and Brent and have them come in. Sorry. Sorry, guys. And Chantel, if you're listening to me -- sorry, my courtroom deputy usually is listening. Bear with me a second. My courtroom deputy says she's calling Pedro, who's our tech person.

MR. PACE: Sure.

THE COURT: I guess unique ones. It just won't help recording. Yeah, see, you can hear when I'm doing it, it's doing it too. It's not just you.

MR. PACE: Weird, yeah.

THE COURT: Yeah, it's not just you.

MR. PACE: I'm happy to present from here if the court prefers.

THE COURT: Well, I think that would record, right?

CLERK: Yes.

THE COURT: Okay. So you can do that. But we're still going to have a problem when they come in. I'm going to have to probably stop you so that they can fix the mic because it's doing it on mine. So it's going to mess up the recording.

MR. PACE: Okay.

THE COURT: See what I'm saying?

MR. PACE: Should I start trying from here and see what happens?

THE COURT: Yeah. Sure, go ahead. It's fine. Don't worry -- I'm not going to say you can't start over if it doesn't work out very well.

MR. PACE: Okay. Is that okay there? Is that high enough?

CLERK: It's picking up.

MR. PACE: Okay. No ringing? All right. So, Your Honor, we filed our motion to dismiss on December 15, 2023. That's a really long time ago. Initially this was supposed to be heard in May, got moved back. But since then, a lot has changed. They filed their amended complaint before that. We filed our motion to dismiss, and then they filed their restated amended complaint after we filed our motion to dismiss in February.

Since then, of the 957 original parties that were sued, by my count, 75 parties have been dismissed from the case, and those include the North Carolina insurance companies who, at the time we filed our motion, the case was simply stayed as to the North Carolina insurance companies. They've now been dismissed. And also relevant to some of the arguments is Axar and Pavonia have also been dismissed. I think the paperwork is pending perhaps on that. But I

believe they've been dismissed with prejudice now. So --

MR. KAJON: I believe that's the case.

MR. PACE: Yes. So one of our bases for our motion is under 12(b)(7), failure to join necessary parties, and by reference, Rule 19, what is a necessary party and what do you do when it's not feasible to join them. The North Carolina insurance companies, I'll talk about them first. They absolutely are necessary parties to at least some of this case. All right. So in our briefing, we asked the entire case be dismissed for their lack of joinder. There are 47 total claims, total counts that have been asserted by the plaintiffs. By my count, there are at least 29 of those counts that require North Carolina to be parties to this case. And I may say North Carolina. When I say North Carolina, I'm generally referring to the North Carolina insurance companies.

So there are actually ten claims out of the 47 that are against North Carolina insurance companies exclusively. No one else. Let's count: 7, 8, 9, 22, 26, 27, 28, 29, 30 and 31. So ten claims presumably are gone. With those ten claims that are gone, presumably also there are hundreds of allegations and perhaps pages in this complaint that are also gone that relate exclusively to those claims. There's eight other claims where North Carolina insurance companies are named as parties along with

other defendants. Those are Counts 11, 12, 13, 25, 32, 34, 35 and 36. So you had 18 claims alleged directly against North Carolina, exclusively or jointly. On top of that, there are 11 other claims that seek to enforce, or alternatively, void loan agreements and pref equity agreements to which the North Carolina companies are parties, either as participating lenders or loan agents. Then you've got another set of those 11 claims that seek to void the MOU, the memorandum of understanding and the IALA, the interim amendment to loan agreements, that is part of the memorandum of understanding. Shall I pause?

THE COURT: Yeah. Just for a second. Okay. Okay. So when Mr. Pace was speaking on that microphone and when I was speaking on this microphone, we were getting like a really --

MAN 1: Feedback?

THE COURT: Yeah, a lot of feedback. So --

MAN 1: (Indiscernible)

THE COURT: Yeah, so there's problems. That's why he was doing his argument from that microphone there, because this was not working. It really was loud feedback, like we had that time on the witness before. Yeah. And mine too, my microphone as well. Yeah, you probably need to stop just at the moment because I don't know if by adjusting it -- okay.

MR. PACE: So there are 11 other claims that seek to void those loans or pref equity agreements. I think I talked about that. And then also those claims seek to void the MOU and the IALA. The point there is that the North Carolina insurance companies are parties to those contracts. And then you've got a subset of those same 11 claims that are seeking constructive trusts or recovery of proceeds over assets received by the North Carolina insurance companies.

So at minimum, of the 47 claims, 29 require North Carolina insurance companies to be a party to this case. And I'll just address this while I'm here. Count 42 names Axar and Pavonia and relates to PBLA, just PBLA's interest or noninterest in Pavonia Life Insurance Company. They are likely a necessary party to that one count as well. So there are at least 30 claims that should be dismissed under 12(b)(7) for failure to join.

Now, a lot of the briefing disputes whether or not the North Carolina insurance companies are or are not necessary parties. They're necessary parties for one of three reasons, and this is all under Rule 19(a)(1). A party is required to be joined if the court cannot accord complete relief among the existing parties in that party's absence. Our position is the court cannot accord complete relief on the ten direct claims against North Carolina insurance companies, for sure, on the eight claims where they are co-

defendants, or on the 11 claims where they are parties to contracts seeking to be enforced or voided.

They are also necessary parties because under Rule 19(a)(1)(B), disposing of the action in the North Carolina's absence may, and this is in the rule, "as a practical matter, impair or impede the person's ability to protect their interests." So the question has to be asked, if the court grants the JPLs what they're seeking on these 29 claims, as a practical matter, is that going to impair or impede North Carolina's interests? And the answer on all of those is certainly yes, for all the reasons I just said.

They're also necessary parties for a third reason under 19(a)(1)(B) and that is the existing parties, the folks who are going to stay in the case, who are not dismissed from the case, my clients, others, are going to be left to double or inconsistent obligations. And a lot of times, when necessary parties are being analyzed under this one, there's a lot of speculation involved. Is there going to be other filings? Are there other cases that are going to subject these existing parties to inconsistent or double recovery?

Here, we are in a unique position not to have to speculate on that point. For example, there are 35 cases right now pending in North Carolina on some of the same loan agreements and pref equity agreements sought to be voided or

enforced by the JPLs in this case. Seven of those 35 cases are set for trial on December 16th. Twenty-four out of 28 of the other cases are in federal court. They've been consolidated for summary judgment purposes only, and summary judgment has been granted on liability. Those lawsuits, by the way, assume the enforceability of the IALA in determining amounts owed under those loan agreements. So it's not hard to speculate how rulings in this case on those particular claims would conflict with what's going on in North Carolina.

Same thing for the MOU. They have sought to void the MOU. The MOU lawsuit has been going on since October 1, 2019. It is now post judgment. Part of it remains on appeal, but part of it is proceeding. The part that's proceeding is the specific performance piece of that judgment, which, as the court may recall, requires contribution of a lot of entities, including defendants in this case, to a new holding company where Mo Meghji, who the court is familiar with, is the chief restructuring officer of that new holding company. That's proceeding. That's happening now; again, inconsistency, double recovery if the MoU is in this case. North Carolina needs to be a part of that.

We also have the RICO lawsuit in North Carolina. The court may recall that the JPLs, in a previous filing --

well, I don't want to say that. I don't know if it was their filing or ours, but they essentially mirrored their RICO clause in this case off the North Carolina insurance RICO case down in the Eastern District of North Carolina. That case has advanced past the dismissal stage, and the court very recently, in August of this year, issued a ruling on the motion to dismiss as to those RICO claims. You've got some of the same parties in this case are parties in that case, and you've got the same claims; again, exposes everybody to inconsistent results.

There's also ULICO's case, which is pending in this court. It recently got returned to this court from the Second Circuit. I believe it went to the Second Circuit and back down. It seeks similar recovery that the JPLs are seeking in this case, at least with respect to the debtor PBLA. And we don't talk about this one much because it's been on ice for a long time. But ULICO filed a very similar complaint to the one that's in this court in North Carolina. That's still there. So for any one of these three reasons, under Rule 19, the North Carolina insurance companies are necessary parties to this case.

But then that takes us to Rule 19(b), which says, what on earth do we do about that? Okay. First, you got to -- you know, in an ideal world, if you've identified a necessary party who needs to be part of the case, the

resolution is to join them to the case, add them to the case. That's not going to happen here. It's happened and got unhappened, right? It was dismissed without prejudice, and there have been courts basically saying, you're not allowed to sue them here. This isn't the right place for all of this.

That means that their joinder in this case is not feasible, and that's what takes us to Rule 19(b). And Rule 19(b) tells us what to do when joinder of a necessary party is not feasible. And it says, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. But the rule also gives the court a lot of discretion to "shape the relief or take other measures." Basically, Rule 19(b) gives the court a blank canvas to be as creative as the court needs to be to do equity and proceed with the case in an orderly and workable manner.

What I would ask the court, what that means, I think that, at minimum, every claim that requires North Carolina insurance companies as a necessary party must be dismissed, whether it is ten, which I think is indisputable, 18, 29, or perhaps even more, because -- I'll get to this in a second. But the response, if you look at the response to the argument on this piece, on the JPLs' piece, they do make the argument that North Carolina is not a party or is not a

necessary party to this case in general. But then they go further and say that's especially true as to the RICO claims, which North Carolina insurance companies have nothing to do with. So even there's a recognition by the JPLs that the North Carolina insurance companies have something to do with most of these claims because the RICO claims make up five out of 47.

I anticipate that what they'll say is, Judge, you have to look at Rule 19(b)(4) and look at what the factors are in deciding to dismiss parties. That's a big deal, dismissing for non-joinder. Courts don't do it lightly. And one of the things the court's got to consider is whether the plaintiffs, the JPLs here, would have an adequate remedy if the action were dismissed for non-joinder. I think what they're going to say is we don't have an adequate remedy. What are we supposed to do, Judge, if we can't sue on these loan agreements, these pref equity agreements, the MOU, the IALA, which, to their view, hurt their interests? What are we supposed to do? What's our adequate remedy?

They preserve their adequate remedy in their stipulation to dismiss. So ECF 320 is their stipulation of dismissal with the North Carolina insurance companies. It dismisses claims in this case with prejudice, but it preserves a very important claim, and that is for the JPLs to assert their rights via proof of claims under North

Carolina law. And they cite a statute in North Carolina, and the statute relates to rehabilitation and liquidation proceedings of insurance companies. It's essentially a bankruptcy, three bankruptcies that are going on in North Carolina with these North Carolina insurance companies. Their adequate remedy is to do what they preserved on their stipulation. They'll file proofs of claims in those proceedings.

So that takes care of at least 29, and with Axar and Pavonia, I'd say 30 of the 47 claims asserted in the JPLs' lawsuit. For the other 17 claims, they should be dismissed for different reasons. And this is where I will not belabor our briefing because there's so much, but I will just summarize what those reasons are.

One, the JPLs do not plead fraud with particularity. So to the extent any of their fraud-based class claims rely on affirmative misrepresentations, that's what they're pleading, including, by the way, the predicate acts under their RICO claims, 9(b) requires, and I don't think there's any dispute about the standard here, that you have to plead the who, the what, the when, the where, with specificity. They have not done that. And we pointed that out in our motion. There are remarkably few statements identified by speaker of what is alleged to be a misrepresentation. So few, in fact, that in their response,

the JPLs backed away from this assertion that their fraud claims are based on affirmative representations.

So what they're saying now is that their fraud claims really are based on a concealment theory, on a failure to disclose. And we brief this in our reply. Even on a failure to disclose theory, you have to plead a duty to disclose. The only direct reference to any duty of disclosure is in Paragraph 2156, and that relates to disclosing PBLA's interest in Pavonia.

Now, to be sure, they have breach of fiduciary duty claims. They have other references to concealment. Those claims are not factually supported, not sufficient to be able to draw a line to a duty to disclose what they have said has been fraudulently concealed.

They've got veil piercing claims that fell for other reasons. And I'll talk about these now, and then I'll talk about these when I talk about the parties. Okay. The veil piercing claims, there are two counts for those, and we pointed this out. These claims are both conclusory and contradictory. So to state a veil piercing claim, even under Rule 8, and there's -- some things get fuzzy in the case law on whether Rule 8 or Rule 9 applies here, I'll admit that. But even under Rule 8, what they had to plead was a complete domination, not only of finances, but of policy and business practices in respect to the transactions

attacked. That's what they had to plead.

The only allegation against almost every defendant named in this case is this: "Upon information and belief, defendant so and so is a necessary party and a company owned and controlled directly or indirectly by Greg Evan Lindberg." That is the only allegation for at least 646 of my 763 clients. That is not sufficient to prove, to even state a claim under Rule 8(a) for alter ego allegations, veil piercing allegations, as to all 646 of those defendants.

They also have a lot of contradictory statements. We pointed those out in our opening brief at ECF 210. Their response did not address any of those contradicting statements. So they say, on the one hand, that Lindberg exercised complete domination and control of the debtors, number one, and also of all of the affiliated entities, number two. But then they also say throughout their complaint that the Greg Lindberg served for like one month on the board of one debtor and that it had a host of board members, officers. The principal control person for one debtor is actually not Greg Lindberg, according to them. It's Scott Boug. And same thing on the affiliated side. They say there are operating companies who do their own books and records, they say that there are 50, 50 different people who were part of or facilitated the fraudulent

scheme. That cuts against the complete domination allegation by Lindberg or even the senior decision-makers. Regardless, as pleaded today, as pleaded today, they don't satisfy their veil piercing counts.

Same thing on a lot of their Bermuda claims. We identified a lot of claims that they've asserted under Bermuda law. I think the folks at EMAM have some arguments on this, that I won't rehash our brief or their arguments. But Rule 44.1 is pretty clear. We've all got to be shooting at the same target here. If you're going to assert that Bermuda law, one, applies in this case, you've got to tell us and the court what the law is. What elements are we attacking? We could all go do our own research. The court could do its own research. That's a recipe for disaster if our research finds different results. 44.1 says, if you're going to apply a foreign law, say what the foreign law is. And we don't have that much information as pleaded right now.

Okay. So that's my argument on the claims, the claims that should be dismissed. I'll talk briefly about the parties. As I said, 646 of them aren't mentioned anywhere. And if we really, really, really want to boil this down, only material allegations against folks related to any of these claims, I think, are Lindberg, the senior decision-makers and the North Carolina insurance companies.

Those are -- I'm oversimplifying because it's a 500-page complaint and there's thousands of paragraphs. But that's the crux of their stories, that those are the bad guys. And you see that in their response. Even in their response when they are describing what they pleaded in their lawsuit, they describe allegations against Lindberg and the senior decision-makers. So outside of those folks, there are no allegations pleaded for anything. And their only argument to this, I mean, they can't argue that there are allegations against those folks. I mean, 646 of them aren't mentioned anywhere. So their only argument is that because they've pleaded a veil piercing claim, it's okay to group all of those other defendants in to one of a dozen subset of counter-defendants or defendants.

First, I would say this. Even if that were true, you haven't pleaded a veil piercing claim, not on this statement. Second, I'd say this. That's not the law. And I will say this, you know, reading all the cases on how to apply veil piercing claim and group pleading and lumping of defendants, how to read those consistently, there are cases that say things that aren't entirely consistent with one another. And I don't think I have found any controlling law in this court. I don't think they have cited any controlling law in this court that would tell the court exactly what to do in this situation.

But we cite a lot of -- I think, two principles. We cite a lot of cases where, at minimum, you cannot attribute fraud to co-defendants based on alter ego allegations. That's principle number one. I think that's a fair statement of what the law is. If you're going to accuse somebody of fraud, you don't get to lump them together through alter ego allegations. You have to particularize your allegations against those defendants. The second thing I can say about the authorities is there seems to be no precedent for this case.

THE COURT: Why does that surprise me, Mr. Pace?

MR. PACE: Exactly.

THE COURT: I think that would describe everything that we dealt with just about in this case.

MR. PACE: That's right.

THE COURT: Please continue.

MR. PACE: So, in keeping with our track record in this case, I think this is another issue where there simply is no precedent. There are a couple cases they have cited where the court allowed some group pleadings and some claim lumping in the context of affiliated entities. I believe the most defendants in any of those entities were three. And you dealt with a parent company and two subsidiaries. Factually, that's not on all fours with our case.

So with respect to the claims, they should be

dismissed because North Carolina is not here, because pleading standards aren't satisfied, because Bermuda law is not pled well. And with respect to the parties, there are simply no allegations against almost any of them. They've got to go.

So I will sum up in what I'm asking the court to do. I would ask the court to dismiss the case and, to the extent any of the case survives dismissal -- and I would say this, even if the court disagrees with me on every argument and denies my motion to dismiss entirely, there has to be, at minimum, a more definite statement, and they've asked for this in their motion alternatively. We have to have a more definite statement even if the court does not expand dismissal to claims that have not already been dismissed.

So the reason for that is ten claims certainly are gone against the North Carolina insurance companies. Their current pleading doesn't read that way. The 11th claim against Axar and Pavonia are probably are gone too. It doesn't read that way. At minimum, those things have to be removed along with every allegation in the 500 pages that relate exclusively to those claims.

But I would argue, and I have argued that the dismissal should reach much further than that and carve out a lot more claims. And I think, honestly, that is the only workable way forward if this case survives, in any part, the

motion to dismiss, and I'll stop.

THE COURT: Okay. I do have questions. I'm sure you expect that. So first, you know, there is case law that exists, and it is limited, at least from our review of it, my review of it, to fraud-related claims where the type of pleading that you referenced before, on information and belief type of pleading, is permissible when someone has a role of a trustee, or, in this case, joint provisional liquidators type of role, where they don't necessarily have access to all the records necessarily. I realize we've had a lot of discovery in this case, so that's not exactly the same facts as sometimes that is. But there is a case law that seems to allow that. And so that would involve, I think, actual fraud, actual fraudulent conveyance type cases and fraudulent allegations in RICO.

So how do you -- you know, it seems like that would allow, you know, from my reading of it, in those limited circumstances, perhaps some sort of, you know, lower pleading standard than 9(b) would be required for that.

MR. PACE: The way I remember reading those cases is that there is a relaxed standard for bankruptcy trustees with respect to actual fraudulent conveyance claims. So actual fraudulent transfer claims where you can just allege the badges of fraud and infer the fraud from there, and that they don't have to -- there's a particular element of those

fraudulent transfer claims that requires you generally to identify the transfers, identify what's been transferred. And as I remember those cases, it relaxes that portion of the pleading standard for the bankruptcy trustee for the same reason you identified. The bankruptcy trustees are third parties coming in and don't have the ability to necessarily trace those things and identify those transfers at the pleading stage.

THE COURT: Okay.

MR. PACE: But I would say on that point, all of those fraudulent transfer claims under my argument should go away because North Carolina insurance companies have to be a party to this case for those things.

THE COURT: We're going to get to that in a second because I'm not sure that's right. I think that argument makes sense to me, you know, possibly in the context of -- possibly in the context of the MOU, IALA issue where someone's a party to the agreement. I get that argument. But I don't have think you can extrapolate that to loan agreements and preparation of pref equity agreements where the only role someone's having as an agent or maybe happens to hold the loans just similarly.

I think that's perhaps moving that argument too far as to being a necessary party because the actual underlying nature of determining these loans and setting

them up and deciding that they were going to exist and creating the documents was, you know, I think here largely alleged that it was done in ways where the North Carolina insurance companies weren't involved at that point. They may have become involved because they acquired them just like everybody else, the other parties.

But I'm not sure that they're indispensable parties for those documents in the same way that maybe there's an argument with the MOU and the IALA where I don't think you'd have a contract, but for they're participating, too, in those parts, in those transactions, potentially.

MR. PACE: So on that point, one of their counts against North Carolina insurance companies exclusively is a suit against those entities as agents on the loan.

THE COURT: Right. But as you point out, that's dead.

MR. PACE: It is.

THE COURT: I really -- I take those counts as dead also. And I agree with you that if this hadn't gone in this timeframe and for the reasons that that occurred and the timing where that occurred, I think you would have seen a complaint that would have had to be amended and those counts withdrawn because there's no basis for those counts, those ten counts anyway, where they don't involve anybody else. I get that. I just have them in red on my chart so

that I know to ignore them. Sorry to put it that way, because to me, when they were just -- when they were dismissed with prejudice, they're gone.

MR. PACE: Right.

THE COURT: So I just take a look at that as gone. Same thing, right or wrong, with Pavonia and Axar, gone. So really where I focus on is the cases where they were in -- the counts where they were involved in the counts, but the other parties are still there. So those weren't counts that were limited to North Carolina.

MR. PACE: Right.

THE COURT: And those is where your argument, I think, is where your argument has to sit to determine whether or not those counts can be dismissed or not because those are the only ones relevant anymore. Sorry. You could get a cleaned up complaint, but you get my point.

MR. PACE: Sure.

THE COURT: So I look at it as for those, and I think those break down into a couple of different groups myself. You know, some of them, I think the arguments are where -- and, you know, I'll just say this. North Carolina insurance companies were added into this, but the nature of the count doesn't appear to be, and the allegations under the law doesn't appear to be something where you would fall into your argument under 19 that you have to have these

parties.

Where I have the hardest issue, and I'm struggling a little bit myself, is on the voidability of the overall contract itself, because they are a party to that contract, and that would, to me, potentially have impacts on parties. And that's where I am having a little trouble myself. I get your argument there. I just am having a harder time seeing it where that argument is significant other types of counts that they're involved in.

So let me just see if I can find one where I could point out why I'm not thinking that's the most important thing here. Maybe where -- here, where they were -- let's see. Yeah. I'm not sure. For example, and I realize this is a Bermuda claim, so that makes it even more fun, but more fun for us, too, and the Second Circuit librarian, who loves us. But how about, you know, okay, the unjust enrichment claim. I'll pick that. This is not a Bermuda one -- under North Carolina law. I'm not sure they're an essential party to asserting an unjust enrichment claim by eliminating them unless there's some argument about there not being any unjust enrichment except for the benefit of NCIC, and I don't think that's true.

I think there was -- if there an allegation -- again, these are just allegations. That doesn't mean I believe they're true. Just make sure I'm saying this for

the record so no one thinks that's what I'm saying.

MR. PACE: Right.

THE COURT: But I'm saying if someone is alleging that there was a non-contractual remedy and there was an unjust enrichment, despite the fact, you know, there was a contract, or perhaps there wasn't a contract and things were transferred anyway, and there was an unjust benefit somehow through the transaction, where there was enrichment, I don't think that -- unless that particular transaction was enriching the NCIC, I don't think that that doesn't mean that you can't have unjust enrichment claims against all these other parties.

And so I just -- for example, that's an example where I don't see that they'd have to be essential. Maybe they're -- when maybe there's a -- if it was a transaction where only they were the ones being enriched, then I would think that's right. And then your argument on what remedies I could apply when there's trial, ultimately, I could see where that could be an issue as well at the time.

But for a motion to dismiss, it's just, can you state a claim that, you know, is at least, you know, beyond the speculative realm here, you know, doesn't state a clear enough statement of claim that it can proceed on. I mean, that's really my standard here. It's not, can I ultimately -- you know, unless I cannot ultimately ever do a remedy, I

don't see that that would be a motion to dismiss issue here. And that's just an example where I don't think every time they're named, and that would be true, for example, of unjust enrichment pursuant to Bermuda law, which, of course, I'm not saying the elements are exact, but you understand my points, the facts are the same that we're talking about, that it could be something like that.

MR. PACE: Right.

THE COURT: So I don't think every one of the claims where NCIC was named originally means that they couldn't proceed just because you could never do that. Again, where I'm having trouble -- where I find your argument resonates the most to me is in the MOU, IALA. And even there, the, you know, the issue is really whether or not PBLA could have actually, or could actually have properly entered into that and had the authorization to do that. And that really goes to both what the organizational documents say, whether there was any change in the regulatory law that required something else from Bermuda, either their approval, as has been alleged, whether or not that, you know, the fact that that wasn't obtained before the documents were executed, whether that, in essence, means that that's void because of failure to comply with applicable law.

I'm not sure -- you know, the impact on that will

certainly impact parties. I'm not sure what my remedy -- you know, my remedy would be exactly because the remedy could impact other parties. And I get to that. But I'm not sure, on the face of the claim itself, that that's necessarily something that couldn't be a claim that was relatively limited against the parties that were actually involved in the governance and should have known that this wasn't done -- being properly done. So I'm not even sure there, for example, that NCIC is a necessary party for that argument. You understand what I'm saying to you, because NCIC wasn't the governing party for the PBLA entity. Other parties were.

But the point you're making about my remedy availability or what I could do if I allow that to proceed in terms of what the result might be, you know, does seem like it has some -- you know, there are some concerning aspects to that. I understand what you're saying.

So let me ask you a question then, about group pleading in the context of RICO claimants. That was -- that has been interesting to me to look at, you know, what courts have done with that. It certainly seems to me that the case law that exists requires predicate acts. The question is whether, you know, you think that the case law requires two predicate acts on the behalf of every single party in the RICO complaint. And that's what I was going to ask you

about.

MR. PACE: Yes.

THE COURT: What's your view on the case law?

MR. PACE: Yes. I do think that's right. And I think a good source of that to kind of summarize that is the Eastern District of North Carolina's opinion on the exact same RICO claims that were brought down there.

So what the court did on that is allowed certain claims to go forward against the particular individuals where there were particularized allegations being part of the enterprise and the racketeering activity and the predicate -- what's the word I'm looking for -- the predicate criminal acts, you know, the wire fraud, the mail fraud, the laundering. But it dismissed those claims, all the RICO claims, with respect to everyone else, where there were no particularized allegations.

THE COURT: Like your 646 people, for example?

MR. PACE: Exactly. The only one it allowed those defendants to stay in on was under 1962(a) and that's because it doesn't require pleading of the fraudulent acts or the enterprise or the racketeering.

THE COURT: Right.

MR. PACE: It requires pleading that you received funds from the fraudulent enterprise.

THE COURT: Okay. that's helpful. Yeah, I will

say both where the group pleading issues, I think, are -- maybe where the best argument that the other side has, maybe on the group leading arguments other than in the context of possibly fraud, to me, seem to be in the context of the RICO claims because of trying to argue that they're all part of the same enterprise.

But I looked at the case law, and I also have been struggling with the predicate act requirements when I've been looking at it because clearly there aren't predicate acts asserted for 646 parties, because there's no acts for 646 parties. So it's a question of, you know, is it part of the enterprise? You know, what's the assumption -- you know, is that valid use of a pleading if it's -- I guess if it's fraud and if it's not fraud in those contexts.

MR. PACE: The way I read it --

THE COURT: And then we've got the overlay. Sorry, just to go there.

MR. PACE: Yeah. Sorry.

THE COURT: I do think that there are one or two cases that have extended this in the context of trustees beyond just the argument of fraudulent transfer, actual fraudulent transfer, because this is a fraud claim, fraud in the RICO context of fraud. And so I think there is some basis to argue or to -- there is some support for the argument that the trustee's -- the leniency granted the

trustee in actual fraudulent conveyance cases does carry over to other types of fraud claims, including this, and so -- in terms of pleading, in group pleading. But it's helpful to understand what the court did in that case because, you know, obviously we have a unique overlay with the trustee here that wasn't in the North Carolina case.

MR. PACE: Correct. And I think the way I read their RICO claims, and I could be reading them wrong, but the way I read their RICO claims, is that they are not actually relying on their veil piercing claims to reach a bunch of defendants for the RICO action. And that instead, I think what they've tried to do is identify concretely who the RICO defendants are, which is a much, much smaller subset of the 763 or even the 646.

THE COURT: Yeah. No, because there are specific allegations in the complaint against different parties, and I think those -- and different entities where there's actual transactions that are flagged in the complaint itself. And so I certainly think with respect to those parties, they've established, especially where there was transactions that went from Party A to Party B, C, D, and then on to E, F, G, there's enough of evidence of the connectedness that's in the complaint for those parties, for those transactions.

So I think the argument in terms of predicate acts or being part of the organization, I'll just use that, or

enterprise, I guess, is the right word, I think those allegations that are made not just for that purpose, also to deal with transfers and other things, but they do show the interconnectedness. So I think the interconnectedness is definitely shown in those parts of the pleading. I think for those parties that are mentioned in those transactions, and especially where they're mentioned in, you know, sometimes where more than one transfer took place involving the parties, I think there's certainly enough information to show that they were connected, you know, into the whole group process.

So I think there, when you add onto it, you certainly have enough information to have specificity of those parties. I think that they are part of the enterprise and with acts that they will participate in of some kind. But I think when you get into the parties that just aren't mentioned, as you know, with your 646, that's where the hard part comes because that's where I see that there's not specific predicate acts, and then I have to rely on something else and I'm trying to figure out, okay, what's that something else. Is the something else -- to the extent it's fraud, it's a fraud argument. Is it the trustee's leniency case law or, your point, is it veil piercing arguments, but where they don't discuss how they were all related and dominated and controlled? Is it somehow a

combination where you get the leniency and an assumption of somehow that they're all together because they were ultimately, you know, controlled, owned by parties? I don't know. That's where I have a hard time with this, a little bit with those types of claims myself.

MR. PACE: Me too.

THE COURT: So all right, just give me one second. I want to look at my notes and then I will hear argument. Oh, when you mentioned some other alternative litigation that was going on, I note you didn't mention the severed action before the North Carolina court on the MOU.

MR. PACE: That is the MOU case I was talking about.

THE COURT: Right. But the JPLs were severed, right?

MR. PACE: That's true.

THE COURT: Okay.

MR. PACE: They were severed. I don't know that that had a separate proceeding or cause. Has that actually ever been set up?

THE COURT: Well, okay, so my understanding again, and I will admit I'm not a North Carolina lawyer, so I'm sure I'm going to butcher this from my understanding of, but my understanding, having looked at this before in other contexts, was that the action was filed with all the

parties. There was an agreement to sever that. The rest of it went to trial without including them as per the agreement of, I guess, the severance. That doesn't mean if the parties decided that they were going to proceed with the action, that it couldn't occur now. I think in North Carolina, I think that's just -- that's up to the joint provisional liquidators as to when, if they ever want to proceed with that action because that will require obviously their consent to do that, or in order for me -- lifting the stay to allow it, I guess.

MR. PACE: Right.

THE COURT: But that's it.

MR. PACE: No, that's -- the court's correct. That case that I was talking about, the MOU case, is the case where PBLA only was a party to that case and was severed.

THE COURT: Right. But I think the issues that they raised in that, in connection with that litigation, haven't been litigated somewhere else.

MR. PACE: Correct.

THE COURT: They could be, in theory, litigated before the North Carolina court. But that's part of why, as part of their argument here, and I don't think that has been adjudicated previously. I mean, the North Carolina court didn't consider whether or not, and specifically their

ruling -- we had a lot of litigation over this, about the extent of their ruling in other contexts, but in that case, they obviously didn't rule on -- the North Carolina court on that issue, on whether or not, as per PBLA, that agreement is enforceable or not enforceable as to them.

MR. PACE: That's correct. That's correct.

THE COURT: So that's still an open issue?

MR. PACE: It is. And that's also an issue in the ULICO case in North Carolina before the same judge. Different case, but in front of the same judge.

THE COURT: Okay. Did not know that, but I knew ULICO by the case, but I didn't know what was in it. So that's helpful. Okay. Let's see. What else did I have for you? Anything? No, I think that's it for the moment. Thank you.

MR. PACE: Thank you, Your Honor.

THE COURT: All right.

MR. HASH: May it please the court. Good morning again. My name is James Hash from Wake County, North Carolina, and I'm here on behalf of defendant Edwards Mill Asset Management, LLC, which referred to, Your Honor, as EMAM, as you've seen throughout the briefing. There's a lot of pages, a lot of paragraphs, a lot of acronyms here.

I will try to be brief because, as compared to Mr. Pace, who represents hundreds of clients on, I think,

40-some-odd claims, we represent one client on defending 20 claims.

So, Your Honor, initially, the plaintiffs asserted 21 claims against EMAM. Of those claims, there were three that were alleged directly against EMAM, and then there were 18 others that lumped EMAM in with the Lindberg affiliate group. EMAM, as a bigger picture matter, vigorously contests it should be considered a Lindberg affiliate. But we also understand, Your Honor, for the purposes of today, we're considered a Lindberg affiliate because the plaintiffs pled us as a Lindberg affiliate. So we have to respond as such.

So with that in mind, Your Honor, we adopt, essentially in its entirety, Mr. Pace's arguments. I will try not to repeat them because, frankly, they were very articulate, and I don't want to undo any good that he may have accomplished with Your Honor. But I will, though, necessarily touch on a few things, but if I'm repetitive, I will apologize in advance.

So, Your Honor, of these, there were 21 counts, three against Edwards Mill, which we were named, actually, under the count as an actual direct defendant. The other 18 were Lindberg affiliate claims, as we call them. Again, I'll note the so-called Lindberg affiliates. But as a matter of housekeeping, one of those claims against EMAM was

one of the -- was the claim that was removed when the RAC was filed. So now, Your Honor, there are 20 claims against Edwards Mill.

We filed our motion to dismiss. We moved to dismiss 18 claims, 16 for failure to state a claim under Rule 12(b)(6) and then two others, the declaratory judgment claims based on 12(b)(1) for lack of subject matter jurisdiction.

I think it's important to note -- I won't dwell too much on Mr. Pace's indispensable party argument, because I think, frankly, he explained it very nicely. But I do want to just talk about it as it relates directly to Edwards Mill. Of the two claims that Edwards Mill did not move in our December 2023 motion to dismiss, those claims were what are now the RAC Counts 12 and 13.

THE COURT: Okay.

MR. HASH: And since we filed our motion, of course, the RAC was filed. And these are the claims Your Honor was talking about earlier. These are the declaratory judgments with respect to the MOU and the interim amendment to the agreement. And, Your Honor, EMAM is party to those as well. We think, for the reason -- we believe -- we join Mr. Pace's arguments in general about Rule 19. But I want to hone in specifically, and note for Your Honor, that we think these claims in particular, because they deal with

specific contracts to which the NCICs are parties, we think that they are clearly indispensable parties, and that these claims should be dismissed.

Now, this leads to an important housekeeping point we don't want to fail to touch, because we did not move to dismiss those claims in our December motion. However, Your Honor, there is authority in this district that Your Honor may dismiss claims as to EMAM, even though we did not so move. And the rationale for that is -- referring to Shtofmakher v. David, I will just cite this because it wasn't in our brief, Your Honor. Shtofmakher v. David, which is a 2017 Southern District of New York case, 2015 WL 5148832.

In this case, Your Honor, the Southern District of New York determined that a court may dismiss claims against a non-moving defendant if the rationale is the same as moving defendants' claims and the plaintiffs are on notice with an opportunity to respond. So, Your Honor, obviously the plaintiffs are on notice of Mr. Pace's argument. And so we would respectfully submit that if the court is inclined to adopt Mr. Pace's argument, that also be applied in equal force to EMAM so the two cases we did not include in our December 2023 motion would also be dismissed.

In a similar vein, Your Honor, and it's already been discussed, Count 42 is case that involves Pavonia and

Axar. In light of the NCICs' dismissal with prejudice and what we understand is the soon to be finalized dismissal of Pavonia and Axar, we believe, for those same reasons, that Count 42 should be dismissed, certainly as to EMAM. And again, we think that this logic holds true, as Mr. Pace has already explained, but in particular, with these three declaratory judgment claims that directly involve EMAM.

The other claims, Your Honor, this brings us into this notion of Lindberg affiliates and group pleading. My perspective on this is obviously somewhat different than Mr. Pace's because he has hundreds of defendants, some of whom, as you've heard, aren't talked about at all. Here, Your Honor, we have one defendant that at least is named somewhere in the complaint. So because we're named, at least we know that they know who we are, which means we can expect them to talk about us. So in the course of this morning, we will look at what they've actually said about us in their complaint.

So the three principal reasons that the claims against EMAM as a so-called Lindberg affiliate should be dismissed are, first, and Your Honors heard this and read this, there's general and conclusory allegations that simply aren't well pled allegations that demonstrate it is plausible. And Your Honor spoke a little bit about the standard that you're supposed to apply here. Again, the

standard is not possible. Is it not? Could we conjure some notion of how it's possible that there could be relief? Is it actually plausible based on well pled allegations?

Now, we talk about the contradictory nature of some of these things, Your Honor. The case law is very clear that we can have alternative legal theories. Well, from time to time, if you read this complaint closely, you get some alternative factual theories, and I don't think you get to do that. I don't think that's a well pled complaint, Your Honor. So certainly we don't think that they satisfy Rule 8. And as we get into these complaints themselves, we don't believe that they come close to satisfying Rule 9. Many of these allegations are claims, as we'll get into later today, we'll see they do, they involve fraudulent transfers. I don't think there's any dispute that Rule 9 applies to those claims.

Secondly, Your Honor, this notion of group pleading, we represent one client that's been lumped in with -- I lose count. Sometimes it seems to be 700 or 600 or 900, but a lot. And the law is that we're entitled to know what it is that the plaintiffs say we did. And as we look at this, we'll see it's just not there. It seems from the plaintiffs' briefing that they are bootstrapping their alter ego theories. It's almost, and I suspect counsel will correct me if I've misapprehended their allegations, but it

seems to be their saying, because we're alter egos, we're responsible, and that, we'll talk about the interplay between these elements and these claims and alter ego, but it's not an automatic thing. Even if, hypothetically, Edwards Mill was an alter ego of another defendant who committed fraud, that's a far cry from saying EMAM committed fraud. There's a distinction between being responsible for the liabilities owed by an alter ego and actually having committed the predicate tort. And we think that's incredibly important for Your Honor as you look at how to parse through these claims and figure out what goes away here today, Your Honor.

And then third, and finally, these declaratory judgment claims. We talked about how they're disposed of on other grounds, but there's no justiciable issue. There's no dispute as to EMAM. I perhaps shouldn't say the EMAM doesn't care. I certainly shouldn't be on the record and say that. But there's no actual dispute alleged that pits the rights of EMAM versus the rights of the plaintiff. So we're not entirely sure what we should even respond to with respect to those claims. So we don't think they're properly before the court. There's not subject matter jurisdiction at this time.

Before moving to specific elements of claims, and if Your Honor doesn't want to get too much into specific

elements, I think that the side parties have all expended a lot of ink and -- well, years ago, it would have been a lot of trees, but we've spent a lot of time briefing here. So I don't want to repeat what's there, but I think there are some things that need to be highlighted.

And the threshold thing to consider is this attempt to consolidate Mr. Lindberg and all of these so-called Lindberg defendants -- excuse me, Lindberg affiliates, as if they're somehow the same defendants. Plaintiffs' briefing actually says that we misapprehend their argument, and that we don't understand that they're saying that all these 900 and some odd parties are one defendant. Well, we do understand that's what they're saying. We frankly just disagree that that's allowed.

And the reason for that really comes from North Carolina law. We could get into choice of law discussions. The plaintiffs have said they've pled North Carolina law for their fraud claims and other claims, which, frankly, is appropriate. And so that's what we're basing this discussion on today. And they say that they have submitted specific and overwhelming allegations that these parties are the same defendants, and it's essentially an effort to backdoor establish joint and several liability.

But that's not what they've pled. The plaintiff is the master of his complaint. I think there's case law,

or there are statements of that in every jurisdiction. The plaintiff is the master of his complaint, and that's not what they pled, Your Honor. There is a clear legal distinction between alter ego and an alleged underlying wrong. And the reason for this is because, in North Carolina, the concept of piercing the corporate veil and alter ego or the instrumentality rule, as it's called in North Carolina, and I suspect other places, it's not itself a theory of direct liability. There must be an underlying claim as to which that liability can attach.

To that point, the North Carolina Supreme Court has stated, and I'm quoting, "The doctrine of piercing the corporate veil is not a theory of liability. Rather, it provides an avenue to pursue legal claims against corporate officers or directors who would otherwise be shielded by the corporate form. Without the agency claims serving as the underlying wrongs that proximately caused plaintiff's harm, evidence of domination and control is insufficient to establish liability. In other words, if the trial court properly dismissed plaintiff's agency claims, it is irrelevant whether the defendants exercised domination control over the defendant companies." And, Your Honor, that is Green v Freeman, 367 N.C. 136. And that is a 2013 North Carolina Supreme Court case, I believe, offered by Justice Martin, who was later chief justice.

I said I wasn't going to focus too much on those specifics of case law, but that is so fundamental to understand what we're about here today. This distinction makes crystal clear that plaintiffs cannot bootstrap group allegations on direct claims simply because they have attempted -- the reason I say attempted is because we're going to come back in a few minutes and argue to Your Honor that they haven't pled alter ego successfully as to our clients.

But the point for now is even if they had established alter ego, that's still a distinction from having saying that we've committed fraud or fraudulent conveyance. Each count alleged must be directly and specifically analyzed separately as to each defendant. For our purposes, that means EMAM shouldn't be lumped in with this amorphous group of defendants. And for Mr. Pace's purpose, same thing. He had -- he's entitled to -- if he has 900 clients, he's entitled to 900 separate explanations of what his clients did. That's our understanding of law. So these veil piercing claims become relevant if and only to the extent that plaintiffs are able to independently establish their underlying claim. Thus, they can't rely on the assertion that they're all one and the same. And these claims fail under Rule 8 and certainly under Rule 9.

With respect to the standard, Your Honor, I think

it's well settled. As Your Honor knows, after Iqbal and Twombly, the standard is higher. I know the court is well aware of that, so we won't belabor that. I do agree with Mr. Pace my understanding of the law. And I don't want to say there's not a case out there in which a trustee hasn't been afforded the more lenient standard. But my reading is -- my scope of knowledge is the same as Mr. Pace's, that my recollection is it was in the context of the fraudulent conveyance claims.

Having said that, Your Honor, I would like to talk briefly about fraud. And I promise I will be brief. I shouldn't talk longer than Mr. Pace, given we don't let the tail wag the dog here. But I do think it's important to look at fraud. And specifically, fraud's a big deal, as Your Honor knows, for all sorts of reasons, has all sorts of ramifications that come from it. So fraud shouldn't be pled lightly.

The allegation is that the defendants jointly concealed material facts from each of the debtors concerning the use of the debtors' assets to improperly fund the operations of the Lindberg affiliates, and then as a result, they suffered economic injury and damages. I believe that is -- that's in the RAC. I believe that's 1800-1804. And it's become clear in the course of the briefing that the plaintiffs are not asserting an affirmative

misrepresentation. Instead, we're talking about a fraudulent concealment or a failure to disclose.

So to have that, though, Your Honor, there has to be a duty to disclose. There has to -- this doesn't -- you don't get inferences here, Your Honor. This has to be pled specifically, and this rack does not explain -- it doesn't allege that Edwards Mill had a duty to disclose. Even if it did allege that there was a duty, it would not explain the source of that duty. It's also unclear how, again, if this is unpled duty, of which we're not sure of the source of, how that caused the damage here.

And this is where I tend to go back and look at the inconsistent factual pleading argument. On one hand, there are allegations that some of these Lindberg defendants controlled the debtors. That's in the complaint. Well, if these Lindberg defendants controlled the debtors, then that knowledge would be imputed to the debtors as well. That's a circular argument, no doubt, but it's hard to reconcile how, on one hand, the debtors had no mind of their own. They're essentially lumped into this network as well. But on the other hand, these critical facts were concealed from them. But in any event, there's no connection that shows how Edwards Mill either had a duty to tell them. There's really -- I'm not aware of any connection at all between Edwards Mill and the debtors that's pled in the RAC, and then how

that damage could have occurred.

So the only way I think that the plaintiffs would get there is if they were somehow able to tie Edwards Mill back in through the group pleading that we've already talked about is inappropriate. And I know I've heard it mentioned already several times today that there aren't many cases like this one. I certainly hope not. There's a lot happening here, Your Honor, as you well know.

But that being said, you know, I remember in law school, we were told, we can't let bad cases make bad law. The law still is what it is. And when we start molding the law, then that can take us down a slippery slope. So I think we have to go back to the foundational principles that have gotten us here. One of those in this district in particular, it is well settled, and I'm quoting from the In re AlphaStar Insurance case, which is about the closest one that I have seen in my reading as to what this case is. I think it was decided by the chief judge, who I think bears this courtroom, and I think that Stevens & Lee were representing the plaintiffs in that case, a bankruptcy trustee case, in which I think there were over 500 allegations and 120 pages or so. So another large complaint, lots of things happening, Your Honor.

But there, in AlphaStar, it was noted, group pleading is generally, and I should highlight generally for

sake of completeness. It doesn't say always, but group pleading is generally forbidden because each defendant is entitled to know what they are accused of doing. That's just a fundamental due process principle, Your Honor. And when fraud is alleged against multiple defendants, a plaintiff cannot "simply clump defendants together in vague allegations to meet the pleading requirements of Rule 9(b)."

This comes out of a very recent case. On September 4th, Judge Jones of this court issued In re RML. And that was particularly instructive, Your Honor, because Judge Jones in that case actually looked at the way the plaintiff had pled his complaint, and it was a pro se plaintiff. And so even then, if we talk about permissive pleading standards, Judge Jones actually noted in his opinion that the pro se plaintiff was entitled to a -- I think it's sort of difficult to define, but I think we all recognize pro se parties get a little more indulgence than other parties. And there, Your Honor, Judge Jones actually looked at examples where it was pled Smith and Jones did X, or, you know, Davidson and Williams did Y. And there, Your Honor, Judge Jones found that even that wasn't enough. Pleading, even in pairs, by a pro se plaintiff wasn't enough to work around the bar on group pleading. So I would commend that case to Your Honor. that is 2004 WL 4048758.

So with that, we've spoken about the fraud. I can

run through the elements of fraud, whether there's -- I'm not sure what EMAM concealed, certainly no attempt to allege that whatever EMAM concealed, it did so intentionally, like, there's no requirement to prove intent. I understand that's where parties are allowed some inferences. But that doesn't even come into play because they can't plead our intent if they can't plead what we allegedly did, Your Honor. So at the risk of sounding colloquial, that dog just doesn't hunt.

There's no admission. It doesn't say -- I think Your Honor understands my point, and I don't want to belabor it. But there's simply not a well pled allegation in this complaint that could sustain a fraud claim against IMAM.

Same thing with actual, really with all the transfers, Your Honor. I could sum it up very simply. Under Rule 8 or under Rule 9, whether actually fraudulent or constructively fraudulent, there's got to be an allegation of a transfer. You know, the who, the what, the when, the where, and they're not there. There's not an allegation in this complaint that says EMAM received the transfer, fraudulent or otherwise, so that we can even begin to have a discussion about it, Your Honor. And certainly there's no specification of the property that was conveyed, the time and frequency of the conveyance and the consideration paid that's required by the case law of this district and other districts. That's the same with the constructive frauds and

transfers as well under Rule 8.

And the pattern here, Your Honor, continues. We could do to unjust enrichment, the elements of unjust enrichment cited in our brief. Well, at a fundamental level, there has to be some benefit conferred. There's no allegation of what benefit was conferred upon EMAM. Constructive trust, that is another scenario where it's not really a claim, it's a remedy. Well, so assuming that there was something upon which to predicate that remedy, there would have to be a showing of what property EMAM received upon which a constructive trust could be imposed. So it fails for that reason as well, Your Honor.

And that brings me, as I sort of wrap up, the North Carolina-based claims, brings us back to piercing the corporate veil. As we've said, Your Honor, we would acknowledge that it is possible -- not saying plausible, it's certainly possible that the court could dismiss fraud or fraudulent conveyance, but still have to do a separate analysis under piercing the corporate veil, because if the claim survives against any of Mr. Pace's clients, then that analysis on piercing the corporate veil would still need to be done.

So we look at EMAM specifically, and we would ask the court to review EMAM specifically, not as an amorphous group of 700-some-odd defendants, but as the one defendant

standing before you, based on due process, asking how is it supposed to defend itself. And with this -- pardon me, Your Honor, with this veil piercing or instrumentality rule, I know the court has read a great deal about it, I'm sure. But at the end of the day, what is actually alleged that will establish the conclusory allegation that Mr. Lindberg, controlled directly or indirectly, Edwards Mill Asset Management? Even there, he controls -- he owned it and controlled it directly or indirectly. Well, I think it could be plausible. We at least ought to know, are they saying that he owns it actually, as a member, owns membership units in the LLC, which if we get past this point, we'll learn that he doesn't. But that's not the purpose of today.

So again, we understand very well the sandbox we have to play in here this morning, Your Honor. But we actually look at what's alleged. With these elements, there must be plausible allegations to establish control. And we would acknowledge that mere ownership is not dispositive. I think that case law is very clear on that point. But what does have to happen for there to be control that's going to establish complete domination. There's nothing but just formulaic recitations about Lindberg defendants. There's no allegation that says Mr. Lindberg controlled. It's not even enough to say that someone is controlled. You have to

explain how they're controlled, Your Honor, and that's just not here. And then, so there has -- control is not enough. Ther has to be control. And then this control has to be used to commit a wrong. And this wrong or breach of duty must be the proximate cause of injury. It has to be with respect to the transaction attacked.

Which transaction? We don't know. As we sit here today, we don't know if what they're alleging EMAM was involved in, we don't know if they're statute of limitations defenses. We just -- we don't know. And we can't defend ourselves on the complaint that's been proffered.

And we look at these different factors. Your Honor knows them well. But I think the takeaway from all the things, Your Honor, is it's not a formulaic recitation. We can look at the different factors, but at the end of the day, under North Carolina law, under Glenn v. Wagner, in order to get there, the control has to be so complete that the entity being controlled has no separate identity, mind or will of its own. And those allegations, simply plausible allegations, simply aren't here.

So for that reason, Your Honor, number one, piercing the corporate veil can't be used to bootstrap the other claims. But number two, the veil piercing claim should be dismissed as the IMAM independently.

And finally, Your Honor, I would like to talk a

little bit about Bermuda law. I am not -- it won't surprise, Your Honor, perhaps you've heard me talk. I'm not an expert on Bermuda law. I don't believe we have anyone here who is at least professing to be an expert on Bermuda law. So where does that lead us, Your Honor. Mr. Pace already mentioned Rule 44.1 and laid out his argument for why it is that the plaintiffs haven't satisfied the requirements of that rule.

Well, where does that lead us, though? The plaintiffs have said Bermuda law applies, I believe, to eight claims, and frankly, defendants, at least EMAM, we haven't said that it doesn't because we don't know. We don't know what Bermuda law is. But I think Mr. Pace's point and the point of the case law is it's the plaintiffs' job to put to the court and to the defendants what that law is.

And the question then would be, well, what happens? What happens? And of course, I know the court perhaps -- you referenced the Second Circuit library. Perhaps the court may have already researched Bermuda law. But I don't think the court has to here. There's precedents in this district, Your Honor, that when a party is given written notice that it intends to assert foreign law in support of or in opposition to the complaint or to a claim, but provides the court with no or insufficient information

about foreign law, the forum will usually decide the case in accordance with its own local law. And I'm citing here CBS Broadcasting Inc. v. Counterr Group, 2008 WL 11350274 and it is quoting Shaw v. Rizzoli International Publishing, Inc., which is at 1999 U.S. Dist. LEXIS 3233, which is a 1999 Southern District of New York case. The reason I'm citing these, Your Honor, is these were not included in our brief.

The CBS Broad case provides that the court may make this determination even in deciding a motion to Rule 12(b)(6) motion to dismiss. So my understanding of how this works, never having the privilege of dealing with foreign law like this, is folks could have brought forward experts in Bermuda law. I think that happened in the AlphaStar case, too, as it turned out, but hasn't happened here.

So that leaves us to look at what is the law of the forum, which here is New York, and we look at these common law analogs for fraudulent conveyance in Bermuda law, or fraud under Bermuda law, and we look back around to the arguments I made earlier and that Mr. Pace has made. If we apply New York law to these Bermuda claims, then they fail for the same reason the other claims fail, Your Honor. So, for that reason, Your Honor, we believe that there's clear authority in this district for Your Honor to apply New York law without having to resort to Bermuda law. And we believe that that application of law will require the dismissal of

these claims for failure to state a claim. So that would conclude -- I spoke perhaps a little longer than I intended, but --

THE COURT: No, that's fine. So, question for you. You started out by saying that your client shouldn't be lumped in, in that definition of Lindberg defendants. Why?

MR. HASH: Well, Your Honor, may I answer that without converting this to summary judgment?

THE COURT: Yes.

MR. HASH: Thank you, Your Honor. Your Honor, frankly, because our client is owned by people other than Mr. Lindberg. It has its managers who are other than Mr. Lindberg. In prior proceedings, it's answered subpoenas. I can't represent it's been a 2004 request here, but I know that it has provided documents. I believe it was a 2004 request, and I believe that information, including a deposition, that's actually referenced in the complaint has been provided to plaintiffs, and we simply believe that the evidence will show that EMAM is separate. It's not controlled as a Lindberg affiliate. And that's why it's been a hard pill to swallow for EMAM to be lumped in with all these other folks.

THE COURT: The next question is, you mentioned before that there's very little reference, although not

zero, to EMAM in the complaint. You're saying -- but you were arguing there's no transactions that IMAM was flagged with in the complaint.

So are you -- I was just trying to understand what you were talking about that you reference that your client is referenced in then because the complaint generally has factual background in it, and a lot of it, and a lot of transactions, although clearly, in some respects, not enough, since we have a lot of people not mentioned, but nevertheless, and there are then, of course, various types of transactions discussed and agreements discussed that were entered into, et cetera. So I'm trying to make sure I understand what specifically was your client mentioned within.

MR. HASH: And, Your Honor, thank you for asking for clarification, because our client was involved. Edwards Mill is a party to the MOU and to the interim amendment.

THE COURT: Right.

MR. HASH: So to be clear, what I meant to say, and I apologize for confusing the issue, when I say there's no transactions, I'm referring to these fraudulent conveyances, these fraudulent transfers.

THE COURT: So only in connection with the MOU and the IALA.

MR. HASH: Oh, Your Honor, the allegation is that

Edwards Mill was formed and that Edwards Mill participated in the creation of the so-called SPVs. And so that's what's alleged as to EMAM, is that it formed those. And then it is alleged that EMAM held controlling voting interest in those SPVs. And that, Your Honor, I believe, is where it stops. There's no allegation of EMAM's role in these subsequent transactions, whether a role or lack thereof.

But again, so that's why I want to be clear, and I'm very grateful that Your Honor asked for clarification. We're not saying that the complaint doesn't mention EMAM, because it certainly does. I think that sets us apart from these amorphous folks that Mr. Pace is representing.

THE COURT: Right.

MR. HASH: But the point, I think, is even stronger. They clearly know who EMAM is, and they still can't get there. We would say that's one of those -- the fact that they know who we are and they couldn't allege anything we think speaks volumes.

THE COURT: Well, in fairness, I mean, I looked at this to see which SPVs we're talking about, but it's certainly possible that they allege things that happen with some of the SPVs, and maybe that goes into that veil piercing argument we just talked about before. And also, it's certainly possible that because they weren't involved with the SPVs, to the extent that the SPVs were involved in

any RICO allegations, that might move that in arguably as part of an enterprise, there may be some argument about that. You still may have the predicate act problem, I grant you there. But I could see why somebody might loop that in.

MR. HASH: Well, I think there's -- I have two reactions to Your Honor's comment, and the first was, I believe you said possible three times, and it's -- other stuff is possible. We could tease out things that could happen.

THE COURT: No, I understand.

MR. HASH: But to your point, it's, it's possible. I don't know that the facts support that, but it's possible. But again, I would respectfully submit that it's not plausible based on what's actually in the complaint.

THE COURT: I understand.

MR. HASH: And as far as the RICO and the predicate act and the enterprise, EMAM is not a RICO defendant.

THE COURT: All right. Thank you.

MR. HASH: Thank you, Your Honor.

MR. LINNEROOTH: Very briefly, Your Honor, Brian Linnerooth, here on behalf of Pavonia and Axar. Just a quick timeline. After Pavonia and Axar filed a motion to dismiss, the court granted the (indiscernible) defendants' motion to dismiss based on the very same rehabilitation

proceeding that both Pavonia and Axar were parties to, after multiple requests to the JPLs' counsel that they voluntarily dismiss their claims against Pavonia and Axar in light of the court's ruling, all of which were rejected. And after Pavonia and Axar filed a reply in support of the motion to dismiss, the JPLs' counsel filed a notice of voluntary dismissal without prejudice, if memory serves me right, on Monday, September 16, 2024.

We objected to the dismissal being classified as being without prejudice and filed a response in the form of a declaration on September 17th requesting instead that the dismissal be with prejudice, laying out the communications we had with the JPLs' counsel requesting that dismissal, as well as requesting that the court entertain fees, in part to offset the fees Pavonia and Axar incurred in their filing. In response, JPLs' counsel filed a note of voluntary dismissal with prejudice on September 19th, last Thursday, and as of today, as best as I can see, neither dismissal has been processed. We're here to make sure that the dismissal is processed with prejudice. And based on the court's prior comments today, I understand that (indiscernible) --

THE COURT: Yes. we will prejudice it with -- we will process it with prejudice with dismissal for certain. The reason that I didn't process it after you had filed your pleading is because I was giving the JPLs a chance to go

ahead and after they had filed their original pleading, and then I saw your pleading was to give them a chance to actually do what they did, which is to request that it be dismissed with prejudice. And also, just for what it's worth, under the Federal Rules of Civil Procedure, they're entitled to just dismiss, even without prejudice, if they wanted to, because no answer, you know, obviously has been filed here. And so at this point, they had the right to voluntarily dismiss.

So that's why I wasn't going to, I'm sorry to say, grant your fees either because I don't find that there was anything inappropriate about their voluntary dismissal. I'm glad that they've agreed to dismiss with prejudice, but that was their right.

MR. LINNEROOTH: Understood, Your Honor.

THE COURT: Okay.

MR. LINNEROOTH: Because that hadn't been processed and not to prejudice our client, we appeared.

THE COURT: No, I'm sorry about that. If you -- if you -- if that was the problem, we would have fixed that before you had to show up. I'm really very sorry about that. We will process your dismissal with prejudice. That's fine. If we -- I will go back and take a look and see what we need to do. I'm guessing just enter it on our -- that we just haven't -- sorry, we just haven't

completed it for purposes of our docket and our process. But we will do that after this, I promise you.

MR. LINNEROOTH: Thank you, Your Honor.

THE COURT: Okay. All right.

MR. KAJON: Your Honor, we've been going nearly two hours now.

THE COURT: Do you need a break?

MR. KAJON: Would it be possible to take a five-minute break?

THE COURT: Sure.

MR. KAJON: Thank you.

THE COURT: You should know me -- I guess you don't know by now because you haven't been here enough, that I could go -- I'm one of those people that's like five hours probably before I would ask myself. But if you -- it's fine.

MR. KAJON: If you wouldn't mind.

THE COURT: No problem. Okay. I'll give you ten.

(Recess)

THE COURT: You may be seated.

MR. KAJON: Good afternoon, Your Honor.

THE COURT: Good afternoon. Time is going by here.

MR. KAJON: Nicholas F. Kajon, Stevens & Lee, on behalf of the plaintiffs. Your Honor, my clients are the

duly appointed liquidators of the four Bermuda insurance companies before you in this Chapter 15 case. They've been tasked with recovering assets for the benefit of the debtors, their policyholders and other constituents. Movants' actions, as detailed in the JPLs' complaint, defrauded the debtors of over $500 million and thereby caused the insolvency of the debtors, which are now in liquidation in Bermuda.

Mr. Lindberg orchestrated a convoluted and opaque fraudulent scheme utilizing over 900 of his affiliates to improperly siphon billions of dollars from foreign domestic insurance companies that he controlled, including the four Bermuda insurance companies that are plaintiffs in this case.

I forgot to mention, Your Honor, I'll be dealing with Mr. Pace's motion. My partner, Mr. Koenecke, will be dealing with the EMAM motion.

THE COURT: Thank you.

MR. KAJON: On February 23, 2023, Mr. Lindberg was indicted on charges of conspiracy to defraud the United States, wire fraud, false insurance business statements presented to regulators, false entries about the financial condition or solvency of an insurance business and money laundering conspiracy. These charges are directly related to its wrongful acts, amounting to racketeering causing

damage to the debtors, as alleged in our complaint. The United States government has also brought criminal charges against Mr. Lindberg's chief lieutenants, Chris Herwig and Devin Solo, including charges that mirror the JPLs' civil fraud and RICO claims.

As alleged in our complaint, Messrs. Herwig and Solo have already pled guilty, and another of the senior decision-makers, Eric Bostic, has entered into a non prosecution agreement with the United States. Separately, Mr. Lindberg was recently convicted of bribery.

There are also civil lawsuits against Mr. Lindberg and/or his affiliates by the United States Securities and Exchange Commission and others, including PBLA's policyholder, ULICO, that is owed over $500 million. The Wall Street Journal and other news media have been covering Mr. Lindberg's misconduct since at least February 2019.

In light of the foregoing and the detail provided in the JPLs' complaint, it strains credulity that the JPLs' complaint is not particular enough for Mr. Lindberg and his instrumentalities to understand what we are alleging they did. Federal pleading is notice pleading. Rule 8(a) requires a short and plain statement of the claim showing that the pleader is entitled to relief. Rule 8(e) provides that pleadings must be construed so as to do justice. The JPLs have amply satisfied the pleading standards enunciated

by the Supreme Court in Bell Atlantic v. Twombly and Ashcroft v. Iqbal. To survive a motion to dismiss, plaintiffs must allege facts that render a claim plausible on its face. The facts alleged must permit the court to draw a reasonable inference based on judicial experience and common sense that the plaintiff has asserted a claim for relief that is plausible on its face.

Judicial experience can include consideration of other courts that have decided similar issues and matters of public record, such as the of aforementioned indictments, convictions and guilty pleas relating to the same misconduct alleged in our complaint. Common sense shows that we are dealing with a sophisticated fraudster and a massive, opaque fraudulent scheme that was designed to conceal how it ripped off its victims.

Your Honor, before going into the fraud claims, I'd like to address what Mr. Pace started with, which is his contention that the North Carolina insurance companies are necessary parties for dozens of claims. It might be a threshold issue, so I'll get that one out of the way first. The simple matter is the North Carolina insurance companies are no longer necessary parties, so failure to join them is irrelevant. Their argument fails for the simple reason that the North Carolina insurance companies were only necessary parties for the claims against them; i.e., the North

Carolina insurance companies themselves, including the claims to void the MOU and the IALA. All of those claims are now of the case. So the North Carolina insurance companies are no longer necessary parties.

The movants' argument that the North Carolina insurance companies are inextricably intertwined and that prosecuting this case without the North Carolina insurance companies creates a substantial risk of imposing inconsistent obligations, fundamentally misapprehends our complaint.

Plaintiffs' claims arise from two separate sets of improper transactions. The first set concerns the vast and intricate scheme orchestrated by Mr. Lindberg and his senior decision-makers to defraud the debtors. The North Carolina insurance companies did not perpetuate that misconduct. To the contrary, they were fellow victims of Mr. Lindberg and his senior decision-makers' pillaging. There is no good reason why plaintiffs' claims against the movants arising from their own misconduct should not move forward at this time, nor have the movants otherwise established how the prosecution of these claims may subject them to multiple or inconsistent obligations.

These claims sounded fraud, fraudulent trading, avoidance of fraudulent transfers, breach of fiduciary duty, civil RICO, et cetera. Since the North Carolina insurance

companies did not perpetuate this fraudulent scheme and are not the subject of these claims, they are, at best, permissive parties. This is especially glaring for plaintiffs' allegations and claims sounding in civil RICO which have nothing to do with the North Carolina insurance companies and everything to do with the RICO defendants, including Mr. Lindberg, as the principal RICO defendant.

As explained on Pages 34 to 35 of our belief, even joint tortfeasors are merely permissive parties and thus not necessary parties for purposes of Rule 19. Nor is there any merit in the movants' undeveloped reliance on Landress v. Tier One Solar, 243 F.Supp.3d 633, a case where the court stayed the action because the principal defendant and fraudster filed for bankruptcy, making his joinder temporarily impossible. The North Carolina insurance companies are plainly not principal defendants and fraudster, as in the Landress case.

The second set of improper transactions set foot in the complaint also center on Lindberg and his senior decision-makers' misconduct beginning in the spring of 2019, when Lindberg's insurance empire began to crumble and regulatory oversight became acute. These allegations show that after Lindberg and his senior decision-makers had already severely impaired the debtors' assets and capital, they engaged in a new set of misconduct and self-dealing

aimed at Lindberg retaining control over his companies and assets by appeasing insurance regulators. This includes plaintiffs' allegations and claims that by subjecting the debtors to the MOU and the IALA, Lindberg and his senior decision-makers breached their duties and harmed the debtors.

The plaintiffs can no longer prosecute their discrete claims as to enforceability of the MOU and the IALA to which the North Carolina insurance companies would be necessary (indiscernible). Yet there is no good reason to stay plaintiffs' claims against Lindberg for breach of fiduciary duty, which is Count 14, breach of loan and preferred equity agreements, Counts 18 and 19 -- pardon e, Count 13 and 14, trouble reading Roman numerals, and unconscionable receipt, Count 34, in connection with the MOU and the IALA.

Those claims, each involving misconduct by Lindberg in his role as a fiduciary of the debtors, are distinct from plaintiffs' separate claims against the North Carolina insurance companies. Mr. Pace referred to the imminent contribution of the so-called SACs, which are the specified affiliated companies, to New Holdco, or NHC, and it's just irrelevant to the claims before this court. We are creditors of the SACs. We have litigation claims against the SACs. If NHC wants to become a shareholder of

the SACs, so what? That doesn't insulate NHC or anyone else from the claims of creditors, distinct claims of creditors against those particular entities. The claims of creditors don't get washed away if you have a new shareholder. So it's irrelevant.

There are at least three separate sets of insurance company creditors here who were defrauded by Mr. Lindberg and his cohorts. You have, obviously, the plaintiffs in this case, our largest policyholder, ULICO and the North Carolina insurance companies, three sets of defrauded plaintiffs, three sets of creditors. They're all seeking to enforce their rights against miscellaneous Lindberg companies and assets. It's not relevant that the SACs are going to be contributed to NHC supposedly any minute. It's been supposedly any minute for years. But it doesn't matter if the shareholder of someone I'm suing changes. It doesn't affect my rights as a creditor. In any event, the defendant should not benefit from the fact they created a convoluted structure and defrauded at least three sets of insurance companies that are now seeking to enforce their rights against the Lindberg empire.

Your Honor, plaintiffs have pled their fraud and RICO claims with sufficient particularity. Movants assert that we have not pled, and Mr. Pace raised this issue earlier in his argument, we have not pled the who, what,

when and where required for fraud claims. Nothing could be further from the truth. The who is Mr. Lindberg, his senior decision-makers and the hundreds of affiliates through which the debtors' pilfered funds flowed and which were misrepresented by Lindberg as legitimate counterparties for the debtors.

As detailed in the complaint, the what is egregious self-dealing while acting as the debtors' fiduciaries. And the complaint states, I don't know how many times, that the fraudsters were fiduciaries and owed fiduciary duties to the debtors. Lindberg and his co-conspirators engaged in a vast and intricate fraudulent scheme to drain over $500 million of liquid assets from the debtors. They caused these liquid assets to be transferred through a convoluted and opaque network of hundreds of Lindberg affiliates, disguising these fraudulent transfers as legitimate loans and equity investments. They then utilized the proceeds for one or more of three purposes, none of which were of any benefit to the debtors: one, to invest in unrelated businesses for Lindberg's benefit; two, to pay exorbitant bonuses and other fees to the fraudsters; and three, to pay Lindberg's personal expenses, including multiple mansions, two private jets, a 200-plus-foot yacht, egg donors and parties in Las Vegas.

The when, as detailed in the complaint, is 2017

through 2019. The complaint provides the relevant dates for all of the representative transactions during this timeframe, as well as the dates of the communications among the defendants and other employees of the Lindberg empire orchestrating the transfers.

The where is Durham, North Carolina, where Global Growth, the ultimate holding company, was based and where Lindberg and the senior decision-makers resided. Also Malta, where Standard Advisory Services Limited, which requires a called SASL, the acronym S-A-S-L, was based, and other jurisdictions specified in the complaint.

Rule 9(b) does not require plaintiffs to identify every detail of every transaction. Rather, the JPLs have met their pleading (indiscernible) by providing details specific enough to give the defendants notice the particular misconduct so that they can defend themselves. In fact, the complaint provides multiple representative sham transactions or each of the four debtors and describes the representative transactions in excruciating, if not nauseating, detail.

A handful of the sham transactions detailed in the complaint are summarized on Pages 7 through 11 of our opposition brief. These allegations demonstrate the play by play mechanics and purpose of each sham transaction, the specific bank accounts and wires used to complete each sham transaction, the wrongful benefits obtained by Lindberg, the

senior decision-makers and other Lindberg affiliates, including the absence of any rational benefit to the debtors, companies to which Lindberg and his senior decision-makers owed fiduciary duties and the resulting harm the sham transactions caused to the debtors, their policyholders and similar stakeholders.

For instance, Paragraphs 1183 through 1189 detail how North Star was robbed of $17 million in liquid assets in exchange for a sham preferred equity investment in Lindberg affiliate and RICO defendant Triton, and how the cash was used for the benefit of a multitude of Lindberg affiliates, including the personal expense companies, all of which was of absolutely no benefit to North Star. The chart in Paragraph 1188 shows how North Star's funds flow through more than 20 Lindberg affiliates, and the preceding paragraph explains those affiliates' involvement in this particular -- one particular fraudulent transaction.

Plaintiffs provide this particular in part by quoting from and reciting a plethora of documents, including, without limitations, emails among Lindberg, his senior decision-makers and other employees of the Lindberg affiliates, deposition testimony of such individuals, bank records and documents memorializing the fraudulent investments. Nothing more is required of plaintiffs. If we had to detail every facet of over 100 fraudulent transfers,

plus hundreds of subsequent fraudulent transfers through multiple layers of Lindberg affiliates, the complaint would run to thousands of pages. Five hundred pages is more than enough to put the defendants on notice.

The complaint underscores these allegations with the identification of specific instances where Lindberg and the senior decision-makers decline to answer material questions posed to them concerning their acts and omissions relating to these sham transactions based on their Fifth Amendment privilege against self-incrimination during their Rule 2004 testimony. An adverse inference from each invocation is appropriate, especially given Lindberg's role as a fiduciary of the debtors and that an attorney of his choosing represented him throughout the Rule 2004 examination.

Contrary to Lindberg's assertion, plaintiffs need not identify specific false or misleading statements because our fraud claims are based on Lindberg's fraudulent scheme to conceal the fact that he and his cohorts were depriving the debtors of all their liquid assets in exchange for worthless investments in related parties. Our detailed allegations of fraud are backed by indictments and criminals convictions arising from the same frauds alleged in our complaint, as well as consent judgments and admissions relating to the frauds alleged in our complaint.

As described in Paragraphs 44 through 49 of our complaint, on December 22, 2022 -- December 22 in the year 2022, Chris Herwig pled guilty to conspiracy to deformity the United States, including underlying federal crimes of wire fraud, money laundering and investment advisor fraud. The bill of information alleged inter alia that Herwig, Solo and Lindberg engaged in a series of sham repo agreements totaling nearly $96 million. That transaction, those sham agreements, was a fraud on PBLA that is the subject of our complaint, and it's one of our representative transactions.

As described in Paragraphs 50 to 53 of our complaint, Devin Solo entered into a deferred prosecution agreement with the United states on January 23, 2023. In it, he admitted guilt to conspiracy to defraud the United States and all underlying crimes in exchange for deferred prosecution and his promise of full cooperation with the federal government's ongoing investigation. The criminal charges against Solo mirror the civil fraud and RICO claims in the JPLs' complaint.

As described in Paragraph of 1579 of our complaint, on July 20 -- excuse me, on July 3, 2023, Herwig entered into a consent judgment against himself in a civil regulatory enforcement action brought by the SEC. That consent judgment relates directly to the racketeering enterprise operated, advanced and perpetuated by Herwig, the

RICO defendants and the facilitating persons to the direct harm of the debtors. As one example, the repo transactions involving PBLA alleged in the JPLs' complaint are at the core of the allegations and claims for which Herwig consented to judgment.

We also had admissions of the movants' joint tortfeasors in our case. At ECF Number 332 of this court's docket is the consent to judgment of defendant Devon Solo, pursuant to which he admitted to liability under 13 counts in the JPLs' complaint, including several fraud counts, breach of fiduciary duty and all five RICO counts under both federal and North Carolina law. Mr. Solo's consent to judgment also contains admissions of many of the material allegations of the complaint, including that Lindberg and the senior decision-makers made all decisions concerning the debtors' investments, that the Bermuda executives were kept in the dark and had no control over the debtors' assets, that Lindberg initiated transactions to get money to affiliates needing cash or to himself for personal expenses, and that 100 percent of the debtors' investments were with Lindberg affiliates.

Mr. Solo also admitted to most of the associated sham transactions, including the repos and other representative transactions set forth in the complaint. At ECF Number 479 is the stay in cooperation between the JPLs

and Christa Miller, former CFO of Global Growth, and Ms. Miller's accompanying declaration in which she admits many of the material allegations of our complaint, including the lack of corporate separateness, commingling of assets and insolvency.

At ECF Number 501 is the stay and cooperation agreement between the JPLs and Eric Bostic and Mr. Bostic's accompanying declaration, in which he admits many of the material allegations of the complaint, including failure to respect corporate separateness, commingling of assets, diversion of corporate funds for Mr. Lindberg's personal expenses, the debtors' insolvency and the representative transactions underlying the fraud and RICO claims.

We would ask the court to take judicial notice of the Solo consent to judgment and the Miller and Bostic cooperation agreements and declarations.

For intentional fraudulent transfer claims, Rule 9(b)'s heightened pleading standard requires the complaint to specify, one, the property subject to the transfer; two, the timing and, if applicable, frequency of the transfer; and three, the consideration paid with respect thereto. In re Saba Enterprises Inc., 421 B.R. 626 (Bankr. S.D.N.Y. 2009).

Plaintiffs have met this standard. Plaintiffs have led the property subject to the fraudulent transfers,

including the exact dates for the transfers, the amount of the transfers, associated bank account numbers and wire transfer identifiers. Plaintiffs' allegations further detail the consideration paid or absence thereof for each transfer. For example, the debtors' exchange of blue chip liquid assets and cash in exchange for worthless, opaque sham investments in a Lindberg affiliate with no rational economic benefit to the debtors.

The intent element of an intentional fraudulent transfer claim can be satisfied for purposes of Rule 9(b), so long as plaintiff alleges facts that give rise to a strong inference of fraudulent intent. Saba Enterprises, at 642.

This strong entrance is established by where a plaintiff alleges facts demonstrating certain badges of fraud which are enumerated on Page 13 of our brief. Again, Saba, and also Sharp International Corp. v. State Street Bank, 403 F.3d 43 (2d Cir. 2005).

Plaintiffs successfully pled all the badges of fraud, thus underscoring the above elements and fraudulent intent. This includes, one, inadequate consideration; two, Lindberg and his senior decision-makers' fiduciary relationship to the debtors; three, Lindberg, his senior decision-makers' and the Lindberg affiliates' retention of the subject property which they employed for both personal

enrichment and to meet the cash needs of unrelated Lindberg affiliates; four, the transactions, both individually and in the aggregate, pillaged the debtors' liquid assets, causing their insolvency and ultimate liquidation; five, a general credit chronology of the subject transfers, including a concerted effort to acquire and pillage insurance companies like the debtors; six, Lindberg, his senior decision-makers and the Lindberg affiliates actively disguised the transactions to mislead the debtors and their regulators, including the use of a complex web of shell companies and other authorities as a means of secreting the transferred assets; and seven, the unusualness of the transactions and the resulting so-called investments, including that none were appropriate investments for insurance companies like the debtors.

Moreover, as the court noted earlier in the day, courts have taken a more liberal view when examining allegations of actual fraud that are pled by a bankruptcy trustee in the context of a fraudulent conveyance, since the trustee is an outsider to the transaction who must plead forth from secondhand knowledge. In re Saba Enterprises, 324 B.R. 641.

For the same reasons, plaintiffs have sufficiently pled their constructive fraudulent conveyance claims, Counts 5 and 6, which involve the same predicate acts but which are

not subject to Rule 9(b)'s heightened pleading standards. Contrary to the assertion of movants, the JPLs have adequately pled that they did not receive a reasonably equivalent value in exchange for the fraudulent transfers identified in the complaint. The fact that in some instances the debtors received some consideration does not make that consideration reasonably equivalent, nor does the fact that the debtors received some interest payments or dividends with respect to the sham investments undermine the JPLS' claims.

Just like in a Ponzi scheme, the fraudsters need to pay off investors who are then entitled to cash to keep their fraud hidden and maintain the existence of the scheme. Receiving a few million dollars of interest on account of hundreds of millions of dollars paid for fraudulent investments is not reasonably equivalent value and does not take these transactions outside the realm of properly pled fraudulent transfers.

Next, the complaint does not engage in impermissible group pleading because Lindberg controlled his affiliates and used them as a single enterprise to perpetuate fraud on the Bermuda insurance companies.

Lindberg's group pleading argument arises from a fundamental misapprehension of a JPLs' complaint. This is not a case where a plaintiff is lumping claims against a

group of unrelated defendants, nor is it a case asserting claims against a group of nearly related defendants. This is a case against doubly indicted Lindberg and his hundreds of shell companies and other affiliates which he owned, controlled and operated as a single enterprise, one used by Lindberg and his senior decision-makers to commit and disguise vast set of frauds against the debtors.

This single enterprise is not only central to the alleged fraud and RICO claims, it also gives rise to plaintiffs alter ego and veil piercing claims.

Lindberg's group pleading argument also ignores the fact that two or more persons can engage in a fraudulent scheme together. In fact, it would be impossible for one person to consummate the fraudulent scheme described in a complaint. Here, as alleged in our complaint, Lindberg and the senior decision-makers worked together with hundreds of shell companies and other Lindberg affiliates to wrongfully deprive the debtors of their assets. These allegations further show that Lindberg and the senior decision-makers use this enterprise to provide perpetuate a vast set of frauds against the debtors, including scores of sham transactions aimed at extracting cash from the debtors for the benefit of Lindberg, the senior decision-makers and Lindberg affiliates. These allegations also detail the enterprise's complex and opaque web of shell companies,

other Lindberg affiliates, a complexity Lindberg and his senior decision-makers knowingly developed and exploited to disguise and perpetuate their fraudulent scheme.

This included creating complex and opaque investment structures, often involving dozens of Lindberg affiliates for any given transactions aimed at disguising sham investments at Lindberg affiliates. The Triton transaction I referred to earlier involved over 20 Lindberg affiliates, obscuring the debtors' so-called investments in layer of Lindberg affiliates and directing cash resulting from a debtor's investment to the bank account of a host of Lindberg affiliates, which then directed such cash to other Lindberg affiliates, including Lindberg's personal expense companies.

The 646 Lindberg affiliates about which the movants complain are undeniably part of the enterprise. They fall under one or more categories of it, including as counterparties to one or more of the debtors' so-called investments, as subsequent transferees with respect to these fraudulent transfers, or as subsidiaries of one or more of Lindberg's major holding companies, such as Global Growth.

The allegations detailing this are specific and overdose overwhelming. They include Lindberg's practice of treating cash and assets of the enterprise, including those of the debtors, as Lindberg's own money that Lindberg and

his senior decision-makers would either raid, commingle and direct to any purpose, including other Lindberg affiliates then needing cash, schemes to defraud or mislead insurance regulators, and to fund Lindberg's personal expenses.

The allegations also detail how Lindberg and his senior decision-makers operated this enterprise with no regard to corporate separateness or formalities. The complaint at Paragraphs 1095 to 1133 details Lindberg's domination and control of the Lindberg affiliates, particularly Lindberg and his senior decision-makers' serial failure to respect corporate separateness and abide by corporate formalities.

A simple and specific example is the testimony of Sandy White, Global Growth's vice president and corporate treasury until 2020, who addressed Lindberg's practice of looking for available cash in Lindberg affiliates' operating accounts and causing it to be "swept up" to Global Growth and then transfer it to Lindberg's personal expense companies. Complaint, at 1141.

The complaint alleges that Ms. White testified that Lindberg sent money directly to his personal expense companies when he needed money and that she assisted with the sweeping up cash since, "It was all within the Greg world. I just did it because it was all his money." Complaint, at 1141.

The complaint alleges that the senior decision-makers also echoed this sentiment in written correspondence between themselves. For instance, at Paragraph 1127, the complaint quotes a November 2018 email from Devon Solo stating that, "It ultimately is all the same cash," in response to an urgent need to move money between Lindberg's affiliates.

Sandy White's testimony cited in Paragraph 1111 of the complaint highlighted the absence of internal processes and procedures for the so-called investments concerning the debtors, including the lack of written policies for intercompany transfers. At Paragraph 1116, the complaint cites Ms. White's testimony regarding Lindberg's regular practice of moving money between Lindberg affiliates when one affiliate "did not have enough money to pay a vendor or a debt."

As another example, at Paragraph 1113, the complaint alleges that the senior decision-makers were often the only signatories for all parties to a transaction involving the debtors' so-called investments. At Paragraph 1102, the complaint alleges that Lindberg and his senior decision-makers intentionally kept the debtors' Bermuda employees in the dark as to how the debtors' revenue and reserves were being diverted.

This is important and counters Mr. Pace's early

argument that, oh, we allege in the complaint, Scott Boug, who was president of North Star and they had all these employees. Yeah, there was a legitimate business there. They were selling insurance products to policyholders. They were receiving hundreds of millions of dollars and it was all looted by Lindberg. But there was a real business under there. There was real cash under there. Otherwise there wouldn't be a fraud.

But Mr. Boug wasn't calling the shots. The shots were called, as alleged in the complaint repeatedly, from the senior decision-makers in Durham, North Carolina. At Paragraph 1156, the complaint shows how Lindberg and his senior decision-makers had total control of the debtors' investments, with all decision making occurring outside the purview of the debtors' executives.

Lindberg's invocation of his Fifth Amendment privilege against self-incrimination during this pre-complaint Rule 2004 examination further underscores these allegations. As cited extensively in the complaint and Pages 18 through 19 of our opposition, Lindberg invoked his Fifth Amendment privilege in response to material questions with respect to his diversion of the cash and other assets to his personal expense companies, the commingling of assets, his practice of raiding the debtors' and Lindberg affiliates whenever they had cash and his failure to respect

corporate separateness.

A plaintiff circumvents concepts like claim lumping and group pleading, whereas here the complaint alleges alter ego liability. This is true even in the context of Rule 9(b)'s heightened pleading standards for fraud. In United States v. TEVA Pharmaceuticals, 2016 WL 750720, a Southern District of New York decision cited on Page 20 of our brief, the court rejected defendant's motion to dismiss a plaintiff's fraud claims on the theory that the complaint had failed to distinguish each defendant's fraudulent acts. The court found that the complaint sufficiently alleged that the defendants participated in the fraud as it alleged that the defendants were agents and alter egos of each other, including that they operated as a single joint entity and integrated enterprise. The TEVA court opined that, "Where a complaint alleges a legal relationship between four defendants, that makes the acts of one attributable to each. Rule 9(b) does not require plaintiffs to allege a specific connection between the fraudulent representations ... and particular defendants."

Similarly, in Ponzio v. Mercedes Benz, cited on Page 20 of our brief, the court denied a motion to dismiss plaintiffs' fraud claim based on purported group pleading, reasoning that plaintiffs' claims could be sustained based on their allegations that defendants are joined in a

corporate structure and acted as alter egos of each other. In so holding, the court emphasized where a complaint alleges fraudulent concealment perpetrated by sophisticated corporate entities that are related to each other, a plaintiff need not distinguish the specific roles that each entity played in the fraudulent concealment in order to meet the Rule 9(b) standard.

The complaint's allegations also easily satisfy the pleading requirements for plaintiffs' alter ego and veil piercing claims, which are Counts 17 and 18. Under North Carolina law, piercing the corporate veil is appropriate where the corporation is "a mere instrumentality or alter ego" of the dominant actor. That's known as the instrumentality rule. See Estate of Hearst ex rel Cherry v. Moorland, cited on Page 23 of our brief.

Piercing the corporate veil requires the satisfaction of three elements: one, complete domination and control; two, use of such control to commit fraud or wrongdoing; and three, proximate cause of the injury or unjust loss. Estate of Hearst, Glenn v. Wagner, both cited on Page 23 of our brief.

Regarding the first element, complete domination and control can be found through more than "just holding a majority or complete stock control." It also extends to controlling the finances, policies and business practices of

the corporation in relation to the transaction that is under scrutiny, inadequate capitalization of the entity, noncompliance with corporate formalities, no independent identity and excessive fragmentation of a single enterprise into separate corporations. See East Market Street Square, v. Ty Corp Pizza and Glenn B. Wagner, both cited on Page 23 of our brief.

That's exactly what the plaintiffs have alleged and what Messrs. Solo and Herwig -- sorry, Solo and Bostic have admitted to in the deals that we did with them which were -- which I cited to earlier on the court's document. Other factors that may be considered include insolvency of the debtor corporation, siphoning of funds by the dominant shareholder, nonfunctioning of other officers or directors and absence of corporate records. Again, Glenn B. Wagner and again, that's what we've alleged in the complaint, and that's what Mr. Lindberg's co-defendants have admitted to.

Plaintiffs easily satisfy these requirements. Regarding the first element, plaintiffs' allegations demonstrate Lindberg's ownership and control of the Lindberg affiliates and the debtors, Lindberg and his senior decision-makers' control over the finances of the Lindberg affiliates and the debtors, the failure to respect corporate separateness and the absence of corporate formalities and corporate records, the absence of independent leadership in

this enterprise, aside from Lindberg and his senior decision-makers, excessive corporate fragmentation for 900 entities, including the serial use of multiple layers of opaque corporate structures and siphoning of funds for the benefit of Lindberg and its cohorts.

Regarding the second and third elements of veil piercing claims, plaintiffs' allegations include the representative transactions detailed at length. The representative transactions detail at length how Lindberg and a senior decision-makers used the enterprise to commit fraud and other wrongs, and how those misdeeds were the proximate cause of the debtors' injuries.

Moreover, the fact that through today at least, Lindberg, GGHI and 600 or 700 other defendants are represented by the same counsel underscores our ultimate allegations and claims concerning veil piercing and alter ego.

Nor should this court credit movants' contentions that plaintiffs' allegations do not put them on notice of the claims against them. These contentions are the definition of a self-created hardship. Lindberg created and manipulated an intentionally opaque, disjointed and vast web of companies as part of a central part of a fraudulent scheme that he and his co-defendants exploited to defraud the debtors, their regulators, policyholders and similar

stakeholders. Lindberg and his hundreds of companies cannot now rely on the intentionally opaque structure that they engineer to fault the plaintiffs. It is axiomatic that movants, with the assistance of Lindberg and their counsel, will be in a position to address and rebut the allegations against particular movants in the normal course of discovery.

The United States Securities and Exchange Commission filed an action in the United States District Court for the Middle District of North Carolina in 2022, Case Number 22-cv-00715 against Mr. Lindberg, his affiliate SASL and Chris Herwig. The SEC action is described in Paragraphs 27 through 39 of our complaint. The SEC action arises from the fraudulent scheme orchestrated by Lindberg and others to defraud PBLA and the North Carolina insurance companies, contains many allegations similar to the allegations contained in our complaint, including the prepurchase agreements and challenges the sham repos that we challenged in our complaint.

Lindberg and SASL separately moved to dismiss the SEC's complaint, alleging inter alia failure to plead fraud with particularity and impermissible group pleading. The district court summarily disposed of both motions by orders dated December 12, 2022, and January 6, 2023. The entry of the orders denying the motions to dismiss the SEC complaint

is referenced in Paragraph 35 of our complaint.

We would ask the court to take judicial notice of the orders dismissing the motions by Mr. Lindberg and SASL. If you'd like, Your Honor, I can hand up copies.

THE COURT: Yes. That's fine. You may approach.

MR. KAJON: May I approach?

THE COURT: Yes, you may approach.

MR. KAJON: To the extent that the complaint lacks specificity as to the 646 Lindberg affiliates, it is a result of movants' wrongful conduct. Plaintiffs allege that the debtors' funds were fraudulently transferred through multiple Lindberg affiliates to prop up unrelated entities, pay exorbitant bonuses and other fees and/or to fund Lindberg's lavish lifestyle.

The JPLs assert claims to recover both the initial fraudulent transfer as well as the subsequent fraudulent transfers to the other Lindberg affiliates. See the complaint generally at Paragraphs 1360 and 1134 to 39, at Paragraphs 1815 to 1831 for Count 4, 1832 to 44 for Count 5, 1845 to 57 for Count 6, and 1903 to 1910 for Count 11.

Virtually all the debtors' investment counterparties were simply shell companies, and the investment proceeds were immediately transferred to other Lindberg affiliates. See complaint generally at Paragraphs 17, 19 and 25, Pt paragraphs 1172 through 1189 for the

Triton transactions and at Paragraphs 1421 through 1428 for AFA transactions.

As a direct result of the movants' refusal to comply with this court's discovery orders issued under Bankruptcy Rule 2004, the plaintiffs lack complete information concerning the fraudulent transfer of the debtors' assets, as we alleged in the complaint at Paragraphs 13, 18 and 63, including the identity of all initial and subsequent transferees. See complaint at Paragraph 1186, which alleges that as part of the Triton transaction, $200,000 was transferred to an unknown (indiscernible) global entity for unspecified funding needs and Paragraph 1320, which references a PBLA repo transaction where two transfers totaling $333,306 was sent to unknown entities.

Movants are trying to use their refusal to provide the subpoenaed documents as grounds for dismissal for lack of specificity. This argument fails for one simple reason, were the debtors' records or documents actually produced in pre-complaint discovery provided the plaintiffs with details to allege fraudulent transactions, the complaint of alleged in granular detail those movants that received the initial and subsequent transfers. Again, I would point the court to the Triton transaction in Paragraph 1188, where we show how the money flowed through 20 Lindberg affiliates.

Denial of the motion and commencement of discovery will allow plaintiffs to seek discovery concerning the subsequent transferees that the movants should have produced in 2022 pursuant to the various Rule 2004 orders entered by this court at Docket Numbers 285, 287.

Movants should not benefit from their noncompliance with court orders and use that noncompliance as a basis for dismissal of complaint. See Strategic Capital Bancorp v. St. Paul Mercury Insurance Company, cited on Page 25 of our brief.

Next plaintiffs have sufficiently pled their civil RICO claims. Movants argue that plaintiffs' civil RICO claims do not satisfy Rule 9(b)'s heightened standard for pleading fraud. However, movants ignore the fact that the predicate acts for RICO incorporate and rest upon the same specific sham transactions as plaintiffs' fraud claims, which, as already discussed, have been pled with adequate particularity.

Movants argue that civil RICO allegations are insufficient in two respects: one, that the allegations do not establish a RICO enterprise; and two, that the allegations do not establish a pattern of racketeering activity. Those arguments ignore the allegations in the complaint and disregard settled RICO law. The sufficiency of a civil RICO claim is judged in accordance with the

notice pleading requirements of Rule 8(a). SKS Constructors, Inc. v. Drinkwine, 458 F.Supp.2d 68, Eastern District of New York, 2006.

"To establish a RICO claim, a plaintiff must prove a violation of the RICO statute, an injury to business or property, and that the injury was caused by the RICO violation." Alix v. McKinsey & Company, 23 F.4th 196 (2nd Circuit, 2022).

The first element is satisfied through seven constituent elements: one, that the defendant, two, through the commission of two or more acts, three, constituting a pattern, four, of racketeering activity, five, directly or indirectly invests in or maintains an interest in or participates in, six, an enterprise, seven, the activities of which affect interstate or foreign commerce. Martin Hilti Family Trust v. Knoedler Gallery, 137 F.Supp.3d 430 (S.D.N.Y. 2015).

Plaintiffs have sufficiently pled a RIC enterprise. An enterprise is defined under 18 USC Section 1961(4), as any individual, partnership, corporation, association, other legal entity, and any union or group of individuals associated in fact, although not a legal entity, an enterprise need not be a form of legal entity, nor must it have a hierarchical structure or chain of command. "Rather, it may consist of a group of persons associated

together for a common purpose of engaging in a course of conduct, the existence of which is proven by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." Equinox Gallery Limited v. Dorfman, 306 F.Supp.3d 560 (S.D.N.Y 2018).

The broad definition has a wide reach, and the very concept of an association, in fact, is expansive. Martin Hilti, 137 F.Supp.3d, at 474.

It has, at a minimum, three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to permit the enterprise's purpose. Equinox, at 570.

Plaintiffs' allegations meet the three structural features of a racketeering enterprise. See complaint, at Paragraphs 1576 through 1600, 1604 to 17.

Regarding the members of the racketeering enterprise, including their relationships and individual roles in advancing it, the allegations explain that Lindberg and his senior decision makers were the primary actors who devised, carried out and directed the racketeering enterprise in furtherance of defrauding the debtors. Lindberg, above all others, conceived, led and perpetuated the fraudulent scheme. Complaint, at Paragraphs 1582 to 84.

Herwig and Solo served as Lindberg's chief lieutenant in the daily operation and advancement of the fraudulent scheme. Complaint, at Paragraphs 1577 through 81.

Plaintiffs' allegations detail the common purpose of the racketeering enterprise, devising and executing a complex fraudulent scheme intended to drain over $500 million from the debtors for the benefit of Lindberg and his affiliates. Complaint, at Paragraph 1604 to 05.

The manner and means of executing that fraudulent scheme is set forth throughout the complaint. The complaint at Paragraphs 6 through 25 generally describes the vast and intricate fraudulent scheme to drain over $500 million of liquid assets from the debtors and cause these liquid assets to be transferred through a convoluted and opaque network of hundreds of Lindberg employers. Paragraphs 1040 through 1088 describes Lindberg's exploitation of the insurance industry. Paragraphs 1089 to 94 described Global Growth's organizational structure. Paragraphs 1095 to 1133 alleged that the RICO defendants failed to respect corporate separateness and abide by corporate formalities. Paragraphs 1134 through 49 describe the diversion of the debtors' assets for Lindberg's personal purposes. Paragraphs 1150 to 56 allege that the RICO defendants deliberately kept the debtors' Bermuda executives in the bar. These allegations

also detail overt acts in furtherance of the racketeering enterprise, including specific sham transactions. See complaint, at Paragraphs 1157 through 1285 for North Star representative transactions, at Paragraphs 1286 to 1443 for PBLA representative transactions, at paragraphs 1444 to 1530 for PBIHL representative transactions, and at Paragraphs 1531 to 75 for Omnia representative transactions.

In their reply, movants assert that we fail to adequately plead each RICO defendant's involvement in the alleged conspiracy as required under Section 1962. In fact, as previously mentioned, the representative transactions described in the complaint demonstrate each RICO defendant's involvement in the fortune scheme. The complaint details the RICO defendants' specific roles in advancing and perpetuating the racketeering enterprise.

The RICO defendants include the complex web of Lindberg affiliates, some of whose operations were intimates with actual business activity. Paragraph 1593 alleges that Global Growth serves as the head of the funnel through which debtors' assets flow. Paragraph 1594 enumerates 22 entities that reported to transact with debtor in one or more of the representative transactions. Triton is included in this group of RICO defendants and the $17 million fraudulent preferred equity investment that flowed through Triton and about 20 other Lindberg affiliates that I previously

mentioned is one of the many representative transactions recapitulated in Paragraph 1603 in the RICO section of our complaint.

Paragraph 1595 alleges that GBIG Holdings frequently engaged in sham transactions involving the debtors to further the racketeering enterprise. Paragraph 1596 alleges that the company borrowers have at least one unsatisfied obligation to a debtor from a sham loan extended to them, or from the debtors' acquisition of preferred equity fraudulently issued by the company borrowers.

Importantly, Judge, we sued over 900 Lindberg affiliates, but there are only about 90 RICO defendants. We clearly did not take a scattergun approach, as movants would have you believe. We carefully selected defendants that were deeply involved in the RICO enterprise, including, obviously Mr. Lindberg, his senior decision-makers and Global Growth, but also various Lindberg affiliates that were essential for the enterprise.

For example, the whole scheme depended on taking money from the debtors and dressing up each illegal transaction as a legitimate investment. Therefore, the debtors' investment counterparties were an integral part of the scheme. Twenty of the debtors' investment counterparties are identified as the company (indiscernible) RICO defendants Paragraph 1596 of our complaint.

As alleged at length in the complaint, the money fraudulently transferred from the debtors was not actually invested in the company partners. Instead, the ill gotten gains were quickly funneled through multiple Lindberg affiliates before ultimately winding up with the intended beneficiary, whether an unrelated operating company or a personal expense company. As detailed in the representative transactions, the company borrower RICO defendants participated in the conduct of the enterprise through execution and delivery of fraudulent documents purporting to be legitimate investments and the improper transfer of the debtors' funds to other Lindberg affiliates in furtherance of the unlawful scheme.

Paragraph 1597 of the complaint alleges that individual RICO defendants and facilitating persons often used Academy Financial Assets, LLC, known as AFA in our complaint, to further the racketeering enterprise. AFA is one of the company borrowers identified in 1596 of our company.

Paragraph 1598 alleges that the personal expense companies use cash improperly taken from the debtors to Lindberg's personal enhancement. Paragraph 1599 alleges that the operating companies obtained cash from the debtors assets through SPVs, fincos and portfolio companies in exchange for fraudulent loans or preferred equity interests.

Paragraph 1600 alleges that the corporate service entities used cash from the debtors' assets to pay for merger and acquisition advisory services that were never rendered. The corporate service entity RICO defendants identified in Paragraph 1600 of our complaint include SASL, which was also sued for fraud by the SEC and for RICO violations by the North Carolina insurance companies.

Your Honor, I have a demonstrative exhibit that I'd like to hand off that reflects the legal defendants' involvement in the enterprise. May I approach?

THE COURT: Yes.

MR. KAJON: I just thought it might be a little easier for the court to see this on a piece of paper rather than babbling on and on about it. I'll just walk you through the first three, and then I'd ask Your Honor to review it at your leisure.

The first one we've identified on Page 1 is Global Growth Holdings, Inc., also abbreviated as GGHI in our complaint. The bullet points are GGHI is Lindberg's ultimate holding company, under which Lindberg and the senior decision-makers principally orchestrated their vast and complex frauds. GGHI, the parent of all the nonindividual RICO defendants, with the exception of the personal expense companies, which are owned directly by Lindberg, was controlled by Lindberg and the senior

decision-makers, and is named as a RICO defendant for its role in orchestrating the frauds, including as the company through which the debtors' cash and assets typically flow both inside and outside the enterprise. I'll dispense with the paragraph citations in the demonstrative, Your Honor.

THE COURT: Okay.

MR. KAJON: Next, GGHI participated in every representative transaction, with resulting unsatisfied obligations to every debtor. GGHI also arranged hundreds of wire transfers, along with debtors, Lindberg affiliates and the RICO defenders. The second entity on the demonstrative is GBIG Holdings. GBIG Holdings is named as a RICO defendant for its participation in the representative transactions, associated unsatisfied obligations to a debtor, and central role in furthering sham transactions involving the debtors at the direction of Lindberg and Solo, who signed closing instructions on behalf of GBIG Holdings. GBIG Holdings played a central role in the SNA Capital promissory note transaction. At the direction of Lindberg and the senior decision-makers, GBIG Holdings also played a central role in the sweeping of cash within Global Growth. For instance, the Triton transaction, Beaufort Transaction, and (indiscernible) transactions.

Third, and this will be the last one I cover on the record, is Academy Financial Assets, or AFA. AFA is

named as a RICO defendant for its participation in the representative transactions, associated unsatisfied obligations to a debtor, and as the portfolio company utilized to fulfill the racketeering enterprise. AFA received a $34 million sham loan from PBLA, the proceeds of which Lindberg and the senior decision-makers directed to (indiscernible), a personal expense company via another loan, later forgiven by AFA.

At the direction of Lindberg and his senior decision-makers, AFA also played a central role in sweeping and diverting assets within Global Growth. See the UCAT transaction and the Triton transaction. AFA was a RICO counterparty -- repo counterparty under the December 27 repo agreements, which are part of our complaint and part of the criminal indictments.

Moreover, as previously mentioned in connection with the group pleading contentions, the JPLs assert veil piercing and alter ego claims, which means that all the nonindividual RICO defendants can essentially be treated as the same defendant. Paragraphs 1604 through 1605 of the complaint described the longevity of the RICO enterprise, including its multiyear existence, during which the RICO defendants pursued the enterprise's common purpose of devising and implementing the fraudulent scheme.

The movants' only rebuttal to this is the

contradictory contentions that the term RICO defendants is too broad because it contains too many subject definitions of the RICO defendants, and that this amounts to something akin to group pleading. In the first place, these facts are those that the RICO defendants themselves created and perpetuated. Second, their attempted breath and sub-definitions argument swallows itself. Objectionable group pleading is absent here precisely because of the specific definitions of the RICO defendants, definitions that also describe their specific role in the racketeering enterprise.

For the same two related reasons, there is no merit to movants' undeveloped string cite to case law concerning broad and conclusory RICO claims on Page 14 of their opening brief. That includes Kress Construction and the other cases cited thereafter. Those cases have no resemblance whatsoever to this case, for the JPLs pled all facets of the RICO enterprise, including its membership, activities and fraudulent purpose.

Next, the plaintiffs have sufficiently pled a pattern of racketeering activity. Racketeering activity is broadly defined to accomplish dozens of state and federal offenses known in RICO parlance as predicates. A pattern of racketeering activity, in turn, is demonstrated by the occurrence of at least two predicate acts within a ten-year period. Predicate acts must be related and amount to or

pose a threat of continued criminal activity.

Plaintiffs' allegations satisfy these requirements. The predicate acts alleged in the complaint connect directly to the defendants' multiyear scheme to defraud the debtors. The representative transactions upon which the predicate acts are partly based bear out a pattern of racketeering activity, with each providing a standalone example as to how the RICO defendants perpetuated their fraudulent scheme.

Each of the representative transactions involve the predicate acts of wire fraud, mail fraud, financial institution fraud, money laundering and money transactions and property derived from specified unlawful activity through interstate and foreign commerce. See the complaint, at Paragraph 1602 and 1603. See also the complaint, at Paragraphs 15 -- excuse me, 1157 to 1285 for North Star representation, Paragraphs 1286 to 1443 for PBLA representations, Paragraphs 1444 to 1530 for PBIHL representative transactions and Paragraphs 1531 to 1537 for Omnia representations.

These allegations further underscore the predicate acts of indictments and admitted felonies of Lindberg and the senior decision-makers, all of which relate to the overarching scheme to defraud set forth in the complaint. See United States Private Sanitation Industrial Association

v. Nassau Suffolk, 811 F.Supp. 808 (E.D.N.Y. 1992), which found that guilty pleas in a state court action "conclusively established the defendant committed two predicate racketeering acts" in civil RICO proceedings. That's 811 F.Supp, at 813.

Movants' only rebuttal to these overwhelming allegations is their contention that the RICO allegations improperly incorporate by reference prior paragraphs in the complaint. This argument is at odds with black letter law. Rule 10(c) especially provides a statement in a pleading may be adopted by reference elsewhere in the same pleading. See Thomas v. JPMorgan Chase and Company, cited on page 32 of our brief, which held that plaintiffs are not required to restate the same facts outlined in a prior section of their complaint for each subsequent claim, and the court will not dismiss the claim simply because plaintiffs incorporate by reference facts stated elsewhere in the complaint.

Nor is there any relevant merit in movants' reliance on United States v. International Longshoremen's association, the case where the government attempted to establish its RICO claims by incorporating by reference hundreds of pages of prior pleadings with no guidance as to which specific allegations are intended to be deemed incorporated.

That is clearly not our case. The RICO

allegations here incorporate specific, detailed allegations, for example, specific sham transactions and related misdeeds set forth in our complaint.

On Page 12 of their reply, movants referred to a recent decision granting in part and denying in part the motion by Lindberg and certain his affiliates to dismiss the RICO claims brought by the North Carolina insurance companies, and Mr. Pace referred to that decision earlier today. Importantly, none of the claims against the control person defendants were dismissed. In the North Carolina action, control person defendants include Lindberg, Herwig, Solo, Global Growth, GBIG Holdings, SASL and AFA. SASL is one of the corporate service entity RICO defendants in our complaint.

Moreover, there are two important distinctions between the North Carolina insurance company RICO complaint and our RICO claims. First, our complaint is farther more detailed, especially with respect to participation in the enterprise by defendants other than the control persons as shown by the representative transactions and the demonstrative exhibit I handed up a few minutes ago. Second, we assert veil piercing and alter ego claims, whereas the North Carolina insurance companies did not do so. As previously mentioned, alter ego claims mean that all the individual RICO defendants can essentially be treated as

the same defendant.

In November 2023, Chris Herwig admitted liability for all claims, including RICO claims, in the action brought by the North Carolina insurance companies in the United States District Court for the Eastern District of New York, Case Number 23-cv-340.

In September 2023, Devin Solo also admitted all RICO allegations and liabilities in the North Carolina insurance company's RICO action. Solo recently admitted liability under all five of our RICO counts, ECF Number 332. Paragraph 1096 of the complaint alleges that each Lindberg affiliate is controlled, managed and/or operated by Lindberg or as he directed or authorized by the senior decision-makers, which includes Herwig and Solo.

Paragraph 1577 of the complaint alleges that Herwig served as Lindberg's right hand in the daily operation, perpetuation and advancement of the RICO defendants' systematic pillaging of each debtor's liquid assets. Paragraph 1580 of our complaint alleges that Solo served Chris Herwig's right hand in the daily operation, perpetuation and advancement of the RICO enterprise.

Herwig and Solo were officers of the nonindividual RICO defendants. In such capacities, Herwig and Solo caused the nonindividual RICO defenders to execute documents memorializing the sham transactions and participate in the

improper siphoning of funds from the debtors for the benefit of Lindberg, his personal expense companies, Global Growth and other RICO defendants or Lindberg affiliates.

In fact, it is axiomatic that corporations can only act through their agents, here with senior decision-makers, including Herwig and Solo. As such, the nonindividual defendants precariously liable under RICO for the admitted RICO violations of Herwig and Solo under the doctrine of respondeat superior. See Board of Managers of Trump Tower at City Center Condominium v. Palazzolo, 346 F.3d 432, at 460 (S.D.N.Y. 2018). In that case, plaintiff pled that the individual defendant's repeatedly claimed in communications with plaintiff that they either owned or controlled one of the defending companies, that in their controlling positions they committed racketeering acts, and that the corporation participated in and benefited from those acts. As a result, the court determined that plaintiff had met its burden to plead a RICO claim based on vicarious liability. Our complaint does all that and more. See also Needham & Company v. Access, 2016 WL 43999288 (S.D.N.Y. August 12, 2016), where the court held that a defendant corporation can be held vicariously liable because it is a central figure in and benefited from the schemes and that the individual defendants owned and controlled the corporate defendant.

Lastly, the movants contend that plaintiffs' RICO claim under 18 USC Section 1962(a), which is Count 45, is insufficient because there are no allegations showing that the RICO defendants participated in the racketeering enterprise as principled within the meaning of Section 1962(a).

That argument fails for simple reasons. Section 1962 incorporates 18 USC Section 2, and its definition of the term principles with specific reference to the collection of unlawful debt, not a pattern of racketeering activity. The requirements of 18 USC Section 2 are therefore inapplicable in this case.

Your Honor, I'm getting near the end. I'd like to turn briefly to the movants' Rule 44.1 foreign law argument. Sixteen counts in plaintiffs' complaint arise from Bermuda law. The movants do not challenge the four counts arising from Bermuda statutes, i.e., the Bermuda Conveyance Act of 1983 or the Companies Act 1981.

Movants instead challenge the other 12 counts arising under Bermuda common law on the theory that those counts fail to identify foreign law in violation of Rule 44.1. This argument is at odds with the letter and the spirit of Rule 44.1. Rule 44.1's notice requirements simply provide that the party who intends to raise an issue of foreign law "give notice in his pleadings or other writing."

Nothing in Rule 44.1 requires a party to specify by the specific statute or rule of foreign law (indiscernible) notice advisory committee note one to Rule 44.1 provides that the party must instead provide "reasonable notice" so as not to unfairly surprise opposing parties. In the case of Rationis Enterprises of Panama v. Hyundai Nepo Dockyard Company, 426 F.3d 582 (2nd Circuit 2005), the Second Circuit explained that the function of Rule 44.1 is not to spell out the precise contents of law, but to inform the litigants that it is relevant to the lawsuit.

It further explained that Rule 44.1 only obliges a litigant to "provide the opposing party with reasonable notice that an argument will be raised. It need not flesh out its full argument." (indiscernible) 586. The court reason the parties' pleading of potentially applicable foreign laws will satisfy Rule 44.1 reasonable notice requirements explaining that while it may force the opposing party to conduct further research, such work is hardly the undue surprise Rule 44 seeks to prevent.

Plaintiffs' counts sounding in Bermuda law satisfy Rule 44.1's reasonable numbers requirements. Each count identifies the specific cause of action under Bermuda law upon which it is based, with extensive and detailed actions allegations set forth through the complaint establishing the basis for the claims under Bermuda's law. The Lindberg

movants do not contend otherwise.

No one in this case has claimed that plaintiffs have failed to properly state a claim under Bermuda law, as was the case in AlphaStar, and the reason the party submitted affidavits from Bermuda law experts. That's not an issue here. They haven't said your counts in Bermuda law should be dismissed because you haven't properly pled them in Bermuda law. They didn't raise that argument. If they had, then they would have needed to submit an affidavit of Bermuda counsel, which is customary, and we would have submitted an affidavit of Bermuda counsel setting forth what Bermuda law is on that particular count in the complaint. That's not our issue.

There is no merit in movants' reliance on Prow v. Holland America Line, 234 F.Supp 530 (S.D.N.Y. 1964). That case, which predated Rule 44.1's promulgation by two years, involve a specific pleading requirement under a superseded admiralty rule. It has no bearing whatsoever on this case.

The same is true with respect to movants' reliance on In re Fairfield Sentry Limited, 627 B.R. 546 (Bankr. S.D.N.Y. 2021) where the court briefly addressed Rule 44 as one that provides the court with notice as to the applicability of foreign law, including in choice of law determinations. While the parties actively disputed in that case whether the foreign law or the forum's law apply in

connection with defendants' dismissal motion, the Fairfield Sentry court reasoned that the plaintiffs' complaint sufficiently showed the application of foreign law and therefore denied the dismissal motion, reasoning the parties were free to reargue the issue at a later stage in the litigation. The Fairfield Sentry holding has no bearing on foreign issues in this case.

There is another foundational flaw to the movants' theory. The 12 Bermuda law accounts about which the movants complain are Bermuda common law claims. The idea that plaintiffs are required to identify something more so as to notice their common war claims is farcical and at odds with any known reading of Rule 44.1. Unsurprisingly, movants do not explain what additional notice they are looking for with respect to the challenged Bermuda claims.

In conclusion, Your Honor, I respectfully request that the court deny the motion of Mr. Pace's clients to dismiss the complaint in its entirety. In the alternative, should the court be inclined to grant the motion, I'd just respectfully request leave to amend their complaint pursuant to Rule 15(a). Now, I'll answer your questions and then I'll defer to my partner on Edward Mills Asset Management.

THE COURT: Okay. As you'll know, I have questions. Okay. So why don't we start, I guess, with the RICO defendants. I guess, what is the basis that you're,

you know -- that the legal basis for not having to allege specific predicate acts for each of the entities you named as a RICO defendant? Like two predicate acts? Like, what's the legal basis for that? Because there is a lot of case law that says even in group pleadings, you have to allege predicate acts by the parties. And I'm not here talking about the senior decision-makers or Mr. Lindberg. There's definitely plenty of things alleged about them. I'm not questioning that.

MR. KAJON: And Global Growth and AFA and GBIG Holdings.

THE COURT: Yeah, exactly. Right. I'm really talking about some of the ones that on your demonstrative would be sort of like at the end where there's not -- or even aren't listed on the demonstrative. But you pointed out there were 90 defendants. Not everyone's listed. So what about those where there's really nothing alleged at all? You know, how do I find -- you know, are you just relying on your veil piercing argument? Because I find that a little troubling. It's hard for me to know that, you know -- it's not hard for me to look at some of these entities and see what you allege and say, oh, yeah, there's definitely, like, on its face, a veil piercing argument. I get that. Because surely the complaint does allege certain parties where that's clear. I mean, you just pointed out

some of them that were involved in a lot of transactions, a lot of decision-making issues, a lot of issues where maybe there would be an argument for veil piercing.

But some of these other ones that just aren't even in your demonstrative, where there's nothing specific described about them at all, you know, how do I decide that's a basis there, that they've met the two predicate acts to start with for the RICO decision, or they're somehow exempt from them. And then how do I just then rely on a veil piercing claim when I don't even know how they fit in the entire Lindberg hierarchy, et cetera?

MR. KAJON: Well, we're certainly relying on veil piercing, Your Honor. We're relying on the allegations that these entities acted as an enterprise, relying on the vicarious liability argument. We're relying on the fact, as alleged in our complaint and in our opposition papers, and as stated earlier today, that they did not comply with your Rule 2004 orders, and give us all the documents that would have shown where the money went.

THE COURT: Stop there for a second. Okay. I obviously have been living that with you all for the last three and a half years.

MR. KAJON: Right.

THE COURT: So what I know is that I have gotten certifications that this is it, and I've got certifications

this is it again. I'll just say it that way. But what if those documents just don't exist, whether they should or shouldn't. What if they're, like, destroyed and they don't exist so that maybe the certification wasn't wrong and somebody hasn't complied? Maybe that's truly. That they've given us everything that's there. I'm not saying I know that. I'm just saying it's possible. So, you know, you're asking me to decide that there was violations of my. Of my. I guess, of my orders beyond what I've already determined was. Was not in compliance with my orders and have already ruled on. How do I decide there's something else?

MR. KAJON: Well, as a couple. So, as I mentioned earlier, there were specific instances in the complaint where we showed where millions of dollars went. The Triton transaction was the one I referred to.

THE COURT: Right. I get that we don't have the information.

MR. KAJON: But for a few hundred thousand dollars, it went somewhere, but it's not clear.

THE COURT: Right.

MR. KAJON: I get that it went somewhere in the Lindberg Enterprise. And two, somebody could have answered our questions instead of taking the fifth. Now he has the right to take the fifth. Okay.

THE COURT: Yeah. No, I mean, you're not going to

get that from the people that are under. I mean, we know that, and that's an inference I'm allowed to make in that circumstance. I get that.

MR. KAJON: A court appointed liquidator who doesn't have firsthand knowledge, who gets incomplete books and records, who gets incomplete documents in response to various Rule 2004 subpoenas, who is met with Fifth Amendment assertions against self-incrimination, how can we discover where all the money went?

THE COURT: They went through third-party bank accounts.

MR. KAJON: Okay, and. But isn't that what discovery's for? I mean, can't we flesh out our complaint?

THE COURT: Right. But I, the problem I'm just having is that, you know, yes, there are certain people, for sure, or certain entities in this group, but I have no problem when I look at this and saying, you're making this argument because I think you've alleged enough things. You've alleged enough acts. Even if you hadn't, I would be entitled to rely on the inferences that you just talked about with respect to, you know, taking the fifth, etcetera. But you get out of this, you know, you get out of the, of the entities that were involved in these transactions that we know about. And you have a list of these entities that, I'm sorry to say it this way, but they may have been, you

know, they're just, you know, we have, there were legitimate businesses in this group. I mean, you just settled, for example, with Cat, because that was a. Yeah.

MR. KAJON: The operating companies include, including our debtors, were legitimate businesses. They had their money stolen, maybe.

THE COURT: Right. But maybe we don't. In other words, what I'm saying to you is I don't know if they created a new entity and came up with this loan agreement or came up with this, I guess, a preference preferential stock and a preference stock. If I, if I came up with that preferred stock. That's what I was trying to say. I don't know if they did that, if that necessarily means that is part of an overall enterprise that was involved in some kind of fraud, or if I can determine that that is somehow, you know, there was, they had enough of a role that they. You'd be able to veil piercing based on that. There are people for sure, or entities for sure. I can see where there's clearly a veil piercing argument, a question based on that. From what you've argued, you know, that there's, there's certainly enough allegations. I get that.

But where there's nothing, sorry to say it that way, it's hard for me to make something of nothing. And that's where I go to my next question, which is going to be, you know, is there any case laws you found where someone

extended that trustee argument to Rico?

MR. KAJON: We haven't found.

THE COURT: Yeah, neither of us.

MR. KAJON: I'd like to go back to the veil piercing for a second.

THE COURT: I don't want to.

MR. KAJON: The dog doesn't want to let go of that bone yet. But we have not only allegations in the complaint, including based on sworn testimony of Global Growth for all the companies was just treated as, you know, Greg's money.

THE COURT: What does all the companies mean?

MR. KAJON: Affiliates, we have the admissions of Ms. Miller, Christa Miller, that I said this.

THE COURT: List is all the course.

MR. KAJON: And Solo and Bostic about lack of corporate separateness and failure to observe corporate formalities and commingling of funds. And it's not limited to a few companies. Our allegation, our complaint that Solo admitted to was Lindberg treated the debtors and all the companies, all the Lindberg affiliates, as defined in the complaint, and the RICO defendants are just a subset of the Lindberg affiliates. Treated them all like his piggyback. So that's a alleged. Now, you know, can I prove that case today? No, but we're not at trial today. We're here on a

motion.

THE COURT: I know that. I understand.

MR. KAJON: I mean, actually might be able to prove that today because we have so many admissions. But putting that aside, you know, here we're talking about.

THE COURT: There's definitely a lot of evidence.

MR. KAJON: A lot of evidence.

THE COURT: I get that.

MR. KAJON: More evidence than you've ever seen on a twelve v. Six membership.

THE COURT: Yeah, well, that's nothing. Anything unusual here is always the same. Unusual is the. Is the buzzword here. And so Mr. Pace's comment that, or anyone's comment that this is an unusual, you know, circle set of circumstances, and there's no case like this, is probably true.

MR. KAJON: I've been involved in dozens of fraud cases over the years. I've never seen anything like that. I understand Madoff was a joke compared to this. Madoff was a very simple fraud. He took in a lot of people. I get it. It was a big deal. It was very simple.

THE COURT: Well, I won't comment on my other cases since that's my case now.

MR. KAJON: Oh, sorry, I forgot about that.

THE COURT: Yes. So I won't comment on that.

Okay, then I guess my next question for you is on the group pleading issues outside of the RICO defendants. I think the, you know, there certainly is case law that gives a lot of lenience to trustees in the context of fraud or actual fraudulent conveyance. And you did, you've obviously alleged badges of fraud. But my question for you is really outside of that, you know, in the complaint, because there are a lot of things that are, you know, that don't fall into that category.

So, for example, the case law doesn't give that leniency, necessarily to constructive fraudulent transfer arrangements because it's an eight a and it's not a nine b standard. You still have to meet that with respect to any party. So. And obviously, you have a lot of other causes of action here that. Where you've alleged, you know, all the Lindberg affiliates are involved in that aren't going to fall into the fraud, put off all the fraud exception. Fraud, fraud, actual fraud exception.

So explain to me why you don't think that you have a problem, then with group pleading in that circumstance. Is it just the veil piercing argument for everything?

MR. KAJON: Well, if I understand your question, are you limiting it to constructive. Fortunately, no.

THE COURT: I'm asking you and everything constructive.

MR. KAJON: Fraudulent transfer claims are pretty simple. You know, it went from North Star to XYZ. Whatever, right? So this is not group. Now, as we point out in our own complaint, in some instances, we can trace the money through multiple entities.

THE COURT: Right, I get that.

MR. KAJON: Including the personal. You know, where it wound up in the personal expenses. In some instances, we can't. Right. We don't know where the money wound up. It went from PBLA.

THE COURT: Right, but, you know, it was.

MR. KAJON: We know the initial transfer. If you get a judgment voiding the fraudulent transfer, then you subpoena his records and you sue the next one.

THE COURT: Right. Understand?

MR. KAJON: So you're also referencing the. Just like a common law fraud claim.

THE COURT: I'm actually referencing all of your accounts where you roped in the Lindberg affiliates, where there's nothing specific pled. That's where my problem is, because I get to, you know, there's some sympathy I have for Mr. Pace's 646 entity argument here, only in the sense that, you know, it's. Again, this isn't meant in any way with respect to, like, the senior decision makers or Mr. Lindberg or anybody that's got anything fled with specificity, but

where there's nothing pled with specificity. And now we're talking about quite a number of other accounts here. You know, how does that not run afoul of the group pleading rule?

I mean, for example, you know, I think one of the examples that was used that's probably reasonable is, you know, an unjust enrichment theory. For example, like, don't you have to show somebody actually received a benefit, you know, that they were somehow unjustly enriched? And how do you do that? Where you have nothing pled anything about that person other than they're in the Lindberg group, sorry to say, that of entities. So how do you know that they were enriched?

MR. KAJON: Well, you know that, and you don't.

THE COURT: Get to make that assumption. I get to do on the trustee claims, you know, with respect to fraud, I don't have that leniency. So what do I do with that?

MR. KAJON: Right. Well, the issue really boils down to judge, is that Lindberg used hundreds of companies in order to perpetuate this scheme. If it had been Global Growth, an intermediate company, and then our counterparty, and you say, went from the debtor to company one, two, and then one.

THE COURT: Anybody got something about that?

MR. KAJON: I don't know if you've ever seen the

corporate chart or the chart I. That goes on for 50 pages or so.

THE COURT: No, I haven't.

MR. KAJON: Yeah, well, it's.

THE COURT: Someday, I bet I will.

MR. KAJON: Someday you will. It's a very. Well, maybe complex.

THE COURT: I could have just reported structure.

MR. KAJON: And so we allege that the money disappeared into the Lindberg affiliates. In some instances where we actually got the records, we were able to trace it. In instances where we didn't get the records, we know it went at least to the counterparty. And then maybe one more step. But sometimes we don't even know beyond the counterpart.

But there are allegations, backed up by testimony and admissions and guilty pleas, that it was all one enterprise. Right? I mean, Herwig and Solo have admitted to criminal RICO violations that it was one enterprise pulling off this convoluted fraud, to defraud the insurance companies, their policyholders, and to fool regulators. And that's what this was about. This is about, oh, look, North Star has this lovely, secured, senior, secured promissory note with the first lien on all the assets of XYZ company. Oh, great. What does XYZ asset. You know, what assets does

it have? None.

THE COURT: I understand. I think where I'm saying, what I'm saying to you and what I'm asking you is really, you know, I get there are circumstances where I get a lot of leeway. There are certainly counts here where your argument of them being all one matters, but I'm not sure that it matters in some of these other accounts that you've alleged in this complaint, because the elements just don't take that into consideration. In other words, that's not what the law looks at. The law looks at. Did somebody like, yes, you may be able to get the money back on a veil piercing or have them responsible for it on a veil piercing argument, maybe someday. Some of them.

I'm just being hypothetical, but it doesn't mean, again, hypothetical. I'm not saying any of this is valid, but just saying. But it does seem to me that you can. And certainly, you know, it's. There are elements you have to allege in certain of these causes of action that have to be somewhat specific. And the fact that you might be able to pierce the corporate bail eventually is just one, one count. But the others, you have to have some specificity. I can't rely. I just don't see how I rely on veil piercing for all these things that are either more contractual, for example, or might even be an argument as a defense that there's a contract, for example, like in an unjust enrichment

argument, where you might, you know, maybe something was done pursuant to an agreement. Just being hypothetical. Okay. So I just -- that's where I have trouble with this, the way that this complaint is written. I mean, believe me, I can only imagine what it would have to be if it was. If it was totally specific. But, yeah, I think it would be impossible.

MR. KAJON: There are many hundreds of. There may be over a thousand transactions, because each fraudulent transfer, as I showed you the Triton, that was one fraudulent transfer from North Star that went through at least 20 Lindberg affiliates.

MR. KOENECKE: Right.

THE COURT: But I'm less worried about that for the reasons you said, because subsequent transfer, and it's normal that you fall from one to the other to the next. I mean, that just happens. And if you know, a chain of it to start with, you just start with that, and then maybe you get to the end, you don't know, and then maybe you try to get more information if you want to, if you haven't collected enough from that point to find it. I understand that, and that's one of the reasons why we have the concept that we might have litigation on an initial transferee, or even the immediate subsequent transferee. I'm just being, again, hypothetical. I know you have chains that go way longer

than that in a complaint, but just saying, and then you eventually, that's another process that's here, and that's not going to be precluded by this. That is just once you have to prove something, you have options.

But I'm just having some trouble, you know, in some of these others, you know, cause of action. And I guess the other thing I will say to you is that, you know, I think your argument is right. And Mr. Pace's argument, I think, also is right on this as well, which is that you both have parts of it that are corrupt. You know, in terms of what I have to do with some of this law, it's true that -- if I don't have more information about foreign law and there's a similar law in our district, then I can just apply our district's law. That's correct. It's also not incorrect that judges have looked things up, like in Judge Morris, for example, in Fairfield and other people. And not surprisingly, we have looked at the law, because I'm trying to understand what the elements are so I can figure out if I have a statute that's similar here or not, you know, not having.

MR. KAJON: Right.

THE COURT: And there are some things that, that don't really fall into that in the common law, necessarily.

MR. KAJON: They haven't alleged insufficiency of the count under Bermuda law. They only alleged, oh, you

should have told us what particular Bermuda law is. And if you look at the counts, you know, for each one it describes what it affords -- trading Bermuda, whatever. I don't know all the names off the top of my head, but they're right there under the roman numeral. And then in the paragraphs for that particular count are pled the elements of that count. Now, we don't, sometimes we don't cite to a case, but I don't, you know, I don't think you have to.

THE COURT: I'll say sometimes, having looked at it, but. Okay, it doesn't matter. I'm not. But to your point, it's not what I'm here to decide today.

MR. KAJON: It doesn't matter for today's purpose.

THE COURT: It does.

MR. KAJON: They haven't had, they haven't made that argument, or we would have come in with the Bermuda law expert citing, you know, the Lauren Shelley's case from, you know, 1492 or whatever.

THE COURT: Yeah, I know there's some that go back. I think they do, because we have to go back to England and look at some of the laws.

MR. KAJON: We should all take a field trip to decide.

THE COURT: I don't know. All right. Well, let me ask you another question, though. There, there was an argument that was raised. That's right. And I think this

isn't necessarily just limited to this point. What about where, what you've brought as a complaint, as accountant, the complaint is really a remedy under the applicable law. Like, for example, constructive trust.

MR. KAJON: Well, again, I don't think they challenge that.

THE COURT: Oh, I don't agree with that. It wasn't just raised today. It's in the papers.

MR. KAJON: I think he said that. I thought he was saying that it applied to the North Carolina insurance companies, and they're a necessary part of that. The constructive trust count, I know, was against the North Carolina insurance companies. It was probably another one against the Lindberg affiliates. But, but no one said, their motion didn't say it should be dismissed because it's not a cause of action recognized.

THE COURT: Yeah, I mean, I hear you. I, that's not the only one. I would have probably raised myself. That doesn't matter because I'm stuck with whatever anybody else raised. But that one was raised, I believe. I don't know, in the. I'll have to look at the context. Okay, let's see what else I was going to ask you. I think that's it. I'll hear from Mr. Koenecke next.

MR. KAJON: Thank you.

MR. KOENECKE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. KOENECKE: Wade Koenecke, of Stevens & Lee, on behalf of the plaintiffs. To spare everyone, I'm going to keep this very short, since I think one thing we can all agree, there's been a lot of redundancy so far, particularly as it relates to EMAM. There's a few points I just want to stress here.

The first is, we'd submit that EMAM passes over what the complaint actually says as to it and its role in all this, in the fraudulent scheme. This is pretty simple. EMAM is a company owned and controlled by Lindberg. Limburg created EMAM in and around 2018, EMAM played a specific and important role in advancing and disguising Lindberg's large language community.

To that end, Lindberg created EMAM for one purpose, to mislead insurance regulators by creating the appearance of disaffiliation with respect to how policyholder funds were invested. More specifically, Lindberg and the senior decision makers created EMAM to allay concerns from the North Carolina Department of Insurance with respect to Lindberg's regular practice of investing nearly all or all of policyholder reserves and funds in companies affiliated with Lindberg, that is, Lindberg affiliates. As the court is aware, this practice of investing policyholder funds in affiliated companies has

a big part of the scheme we've been talking about that the complaint sets forth in detail. So is the concealment of those affiliated investments.

So to accomplish this disaffiliation, Lindberg and his senior decision-makers use EMAM to create these things called special purpose vehicles, which made conduit loans from one of the North Carolina insurance companies or another company to an operating company also owned by Greg Lindberg. In this scheme, EMAM held a 100 percent voting interest in each SPV. The purpose of this voting interest was to create an artificial disaffiliation between Lindberg and the loan in question, so that it appeared that these were not, these investments were disaffiliated with Lindberg.

As we detail in the restated amended complaint, the SPVs were shams with the whole goal of hiding Lindberg's ownership and control both the lending and borrowing sides of these so called investments. A brief note. Defendant Devon Solo, in his consent to judgment. He entered in this case, I believe, at the beginning of July, even admitted as to how Lindberg used EMAM in this fraudulent scheme. That is ECF number 332 with regard to solar consent to judgment. The SPVs, along with the later conversion of the SPVs into these financing companies, also known as fincos, were a central part of Lindberg's convoluted and opaque corporate

structure. The complaint details at length how these corporate structures, including the SPVs and fincos, played a critical role in perpetuating and advancing sham transactions that eventually harmed the debtors.

More specifically, these SPVs and fincos are referenced throughout the complaint. There's specific transactions dealing with them, one of which is (indiscernible). It's 1484 to 1486 of the restated amendment complaint. And it also points the yarrow three representative transaction is another one involving the SPVs. Due to the fact EMAM holds a voting interest in each SPV, it remained intertwined with the dozens of sham transactions detailed in restated amendment complaint. As a result of this, it is named in what is now 20 counts in restated amendment complaint.

I believe at this juncture, EMAM is challenging 18 of them. EMAM is not challenging the sufficiency of the allegations generally, but just as to it, EMAM as to each of these counts, the main argument being that it's grouped with the Lindberg affiliates and the allegations regarding EMM are somewhat limited, notwithstanding the very material allegations I just went through.

We submit that this fails for two principal reasons. The first is circle back to the joint failing enterprise we have here, and EMAM operating what is

essentially as a part of the Lindberg affiliates that operated as essentially one company owned and controlled by Greg Lindberg. I'm not going to repeat that again, because we've already been through it quite a bit, but that's EMAM falls squarely in there in terms of how it was involved in the enterprise and more specifically, the Lindberg affiliates.

The second reason is EMAM cannot overcome the veil piercing claims against the Lindberg affiliates, which, under these circumstances, we believe operates to sustain all of these claims. If anything, Emam's reply brief, we believe, actually goes a long way in showing how Vale Percy applies here. And the case that I'm talking about is, I think it's the principal case they reply brief. And that is Fisher Investment Capital v. Catawba Development Corporation, 689 S.E.2d 143. And it's a North Carolina appellate division case for 2009.

What it talks about is the instrumentality rule and the instrumentality rule is the idea that whether a separate identities of parent and separate identities of parent and subsidiary and affiliate corporations may be disregarded where one entity is an altered ego or mere instrumentality of another entity, shareholder or officer, like regular veil piercing, the instrumentality rule requires a plaintiff to establish three things. We've been

through it again already before, but I'll just briefly note this.

The first is complete domination and control not only of finances, but of policy and business practices with respect to the transactions specifically attacked the use of that control to commit a fraud or wrong, and that that fraud or wrong resulted in injury to the plaintiffs. EMAM's principal challenges to the first and second prongs the veil piercing analysis, and they claim that allegations fail to show that the domination of control with respect to any specific transaction at issue, that also includes that Limburg used that control to commit a wrong.

We submit that this ignores what the complaint actually says. Lindberg created and then administered EMAM for a specific purpose, to mislead insurance regulators as to his use of affiliate investments, which is part and parcel to the greater fraud we've been discussing here today. Lindberg, through email accomplished this purpose through the creation of SPVs for sham transactions.

We do respectfully submit that a company created by an individual to advance a fraud, and which did in fact advance a fraud as intended, undoubtedly falls within the purview of bail period the allegations has alleged. This is especially true when you consider the broader allegations in this complaint as it relates to not only EMAM, but the

Lindberg affiliates. And this is further underscored by all the separately pending criminal actions in this case as well.

The last point I would make deals with EMAM challenges are two counts dealing with declaratory relief under the grounds that there's no subject matter jurisdiction over those two claims. We respect. This meant the opposite. These declaratory reliefs that assault needs to we're talking about Count 16 and Count 42. Those are the two dealing with declaratory relief relate to a series of transactions in which SPVs created by EMAM and in which EMAM had a voting interest and was involved in these transactions, is as a direct interest in this declaratory relief and a direct adversarial interest in these actions.

We have the law set out in our opposition brief to Eman on that point. I won't read it over because it's just basically the fundamental concepts of declaratory relief under federal rules. So we'll repeat that again, but we respectfully submit that email is very much involved in that declarative release. So at this point, Your Honor, if you have any questions -- I promised to try to keep it pretty short. We've been over a lot here today in terms of the substance of some of these claims.

THE COURT: Okay. Sorry. I was just trying to see which 16 and 42 are, I guess. Let me ask you a question

about 42. Does that even continue? Now that's a question.

MR. KOENECKE: Sorry. Does it continue?

THE COURT: Yeah. Isn't 42 the Axar one? Sorry.

MR. KOENECKE: Yes, it does pertain to Axar.

THE COURT: So what would the declaratory relief be?

MR. KOENECKE: Well, this one, it relates to Lindberg's acquisition, Pavonia, back in, I believe it was late 2017, where he used a series of SPVs and other sham transactions. Some of that involved money from one of the debtors, specifically PBLA.

THE COURT: Right.

MR. KOENECKE: And he used that to acquire Pavonia.

THE COURT: Through an entity to other entities.

MR. KOENECKE: Yes, you're right, Your Honor, but the SPVs were absolutely involved in that transaction. More recently, through the Michigan proceedings, Lindberg sold Pavonia to Axar. The proceeds of that transaction, Lindberg diverted to purposes other than repaying it, such as PBLA.

THE COURT: I guess I'm just trying to understand the declaratory nature of it, of your release that you're seeking under that circumstance. If I'm not going to unwind the transaction underneath it, the original, the sale transaction on Axar.

MR. KOENECKE: Correct.

THE COURT: So, I mean, then it seems to me it's a -- isn't that all caught up in fraudulent transfer arguments, then? Because what you're really saying, I think, is that the transaction of the funds from the use of the funds from PBLA for this purpose was not appropriately authorized or appropriately or, you know, what didn't benefit PBLA. So therefore, it was a sham transaction. I get that. Or a fraudulent transfer. I could do that, but I guess I'm just trying to understand, what am I declaring?

MR. KOENECKE: Yeah, well, you're right. It is absolutely. There is the fraudulent transfer aspect of it.

THE COURT: What's left to declare?

MR. KOENECKE: Well, we have the proceeds left with respect to Pavonia, Axar purchased Pavonia.

THE COURT: Right. And the funds went to GBIG, if I was, like.

MR. KOENECKE: Correct, which is still a Limburg entity.

THE COURT: Right.

MR. KOENECKE: So it's.

THE COURT: Again, it's not a declaratory action. That's. I don't see. Well, what the relief is that you're seeking. I mean, I've already found previously, and would have found if I had to decide this again, I think, as you

all know, because I think, said that. That that transaction was authorized by the Michigan court, so, you know, through the Michigan process, so I wouldn't be unwinding that or declaring something about it. So what am I asking?

MR. KOENECKE: No. Yeah, correct. We're not touching the Michigan.

THE COURT: Right. So that's my question. What's. What declaratory relief are you seeking?

MR. KOENECKE: Well, there's the question first of the fraudulent transfers, whether PBLA has an interest in Bodia.

THE COURT: No, not based on the sale transaction.

MR. KOENECKE: Well, there's the proceeds from the sale.

THE COURT: Right. Okay, so you're saying that they had a. Okay, sorry, my recollection, and it might be wrong, because I haven't seen a while. This was -- tThat was a -- that was like a sale of stock and assets, depending on the circumstance. Right.

MR. KOENECKE: It was a complete sale, as I understand.

THE COURT: Right.

MR. KOENECKE: I don't have it in front of me.

THE COURT: Right. So then I'm just trying to understand, what am I declaring.

MR. KOENECKE: That there. Well, there's the first. The question of the interest in Pavonia, and now it's the proceeds. It's what it's been converted to.

THE COURT: Yeah. Right. But I don't understand what the argument was about the interest in it. I guess I'll have to go back and read your complaint. I don't. My understanding was slightly different about this transaction, just that it was that there was funds that went from PBLA that were used elsewhere, but that didn't mean that there was some ownership interest. In other words, PBLA didn't buy the stock and then have Lindberg sell it out from under them. That didn't happen.

MR. KOENECKE: Correct.

THE COURT: So I guess I'm just trying to understand why this isn't a dead point topic, but okay. All right. I'm not sure I understand that, but that's -- okay.

MR. KOENECKE: And then, just to clarify, Your Honor, there's the other declaratory -- no, I have it in front of me now.

THE COURT: Okay, go ahead.

MR. KOENECKE: Count 42, pledge to request the court enter a judgment in order declaring that PBLA retains ownership rights and interest with respect to Pavonia and directing acts of repay PBLA for ownership interest in Pavonia and amount to be determined at trial.

THE COURT: Okay. This is not resolved with Axar and Pavonia dismissing your count with.

MR. KOENECKE: Go back to the proceeds. But we'd ask --

THE COURT: Okay, again, I'm just. I'm having trouble because declaratory relief is equitable relief. Usually it's relief for me to do something like that. And it's not usually a monetary, like, determination of right to monetary proceeds. That's usually something that doesn't usually involve declaratory relief. Unless you have some kind of ownership argument. And you don't have an ownership argument.

We just discussed that, so I'm actually just trying to understand. Like what? Like where does that come from? I understand why you have arguments to the proceeds. There's a lot of theories under which arguments to proceeds could be made. I mean, you know, certainly there's all the fraudulent transfer arguments we've talked about, both constructive, actual whatever. And then of course there's other contractual rights you might have had, you know, based on the loan or anything else that occurred. I could understand that. That's a contractual argument. Not sure that's asserted, but if it is, it is. But I'm not sure where I see declaratory relief, but. Okay, that's fine. I'm just trying to understand what that was. Okay.

MR. KOENECKE: Okay. The other declaratory count pertains to more of the broader set of the sham transactions involving SPVs.

THE COURT: Right.

MR. KOENECKE: And that part is quite likely, but it very specifically involves those sort of interest.

THE COURT: Right, no, I understand. And that hasn't been in any way. The circumstances have been changed by virtue of the dismissal of prejudice in that circumstance. Because those aren't. That's not related to that transaction. Those are other transactions. Yes, understood. Okay. All right. Thank you.

MR. KOENECKE: Thank you, Your Honor.

THE COURT: All right. Okay. Mr. Pace? So I'm very excited to hear from you again. I'm always excited to hear from you, Mr. Pace.

MR. PACE: I think everyone has --

THE COURT: I don't know how many hours I've spent listening to both you and Mr. Kajon over the course of my three and a half years on the bench. But it isn't short from all your disputes. But that's okay for a while. I had Mr. Connell in the interim. Like taking over some of your time.

MR. PACE: That's true.

THE COURT: It's not so bad (indiscernible) --

MR. PACE: I miss Mr. Connell. Yes, I'll just address these.

THE COURT: Sure.

MR. PACE: In order of my notes.

THE COURT: That's fine.

MR. PACE: North Carolina insurance companies being necessary parties. I think Mr. Kajon said that he agrees that counts against North Carolina and counts that require North Carolina should be gone. And I think he said including claims to void the MOU and IALA.

THE COURT: No, I don't think I heard that. I think I heard counts that were actually against North Carolina being eliminated. I'm not sure it's eliminated. Unless Mr. Kajon tells me I'm wrong. But any counts that happen to involve the NCIC. But they weren't the only party you're going away to, right?

MR. KAJON: With respect to the MOU and the IALA. We have counts against Mr. Pace's clients and the NCIC are probably included in there, but they're gone. But their counts against Mr. Pace's clients that you harm the debtors and breached your duty by entering into these contracts that impaired our rights. And those claims, as far as we're concerned, are still in the case.

THE COURT: Right?

MR. KAJON: You reduce the interest rate, you

deferred interest payments. So those harms aren't going anywhere because they're against the Mr. Pace's clients for having orchestrated the impairment of our rights.

THE COURT: Pretend counts that they're that North Carolina had only against them. You can cross up your list or in my case like I have them in red, but whatever. You understand my point?

MR. PACE: I see.

THE COURT: Yeah, I didn't think they were going away.

MR. PACE: Okay, I misheard. He did say I think, and I did have trouble hearing for everything. But I think he said our argument that North Carolina insurance companies are inextricably intertwined in this lawsuit fundamentally misapprehends his position. That's what I heard him say. In response to that, I have, to Mr. Kajon at (indiscernible). Here's what he said. So the parties are inextricably intertwined whether we like it or not. We continue to be co investors and maybe hundreds of companies, either directly or indirectly. And we're going to need to sort that out someday, one way or the other. Dot, dot, dot.

It goes to how inextricably intertwined the North Carolina insurance companies are with the Bermuda insurance companies. And I know the court, I think the court is probably leaning against me on how far the necessary parties

argument reaches into particular claims. But what he just said is our, that's basically the legal standard when it comes to, quote maybe hundreds co investors and maybe hundreds of companies either directly or indirectly. That goes to their, what I think goes to their claims to void those transactions. And what was helpful to me in trying to figure out what they wanted with each in particular claim and whether it did reach to North Carolina was their prayer for relief section where for each count they asked the court precisely what it is they want to do.

And on those fraudulent transfer claims, most of them start with avoiding or set aside or setting aside all transfers made from each of the debtors to any of the debtor investment counterparties. I read that to mean literally all these loan agreements and all these prefect agreements.

THE COURT: Okay, I guess it depends on whether the loan agreements or the equity agreements are transfers or if it's the cash that came up each way that's the transfer. Because I agree with you, if you're trying to avoid all the loan agreements and all the preference, preference preferred stock agreements that would involve other counterparties. But I'm not sure that's what the relief is.

I think their argument is that money went into buy into these investments and then it went elsewhere. And that

I'm not sure that involves the North Carolina insurance companies just because they were also lenders, because money came from them and went into the same company and maybe went somewhere else, too. We don't know. Or maybe it all there. It's all there.

MR. PACE: I don't know.

THE COURT: But I'm just saying to you, I think you're confusing the loan agreements and the preferred stock agreements with cash transfers, and I don't think they're the same, but I don't think all they're seeking to do is void the loan agreements and the preferred stock agreements. I think they're looking to get their cash back. So. Okay, I hear you.

MR. PACE: There's a lot of references to consented judgment, guilty pleas, deferred prosecutions, etcetera in this case and in other cases. I think the only thing I would say on that is the court has to accept their pleadings as true. At this point. At this stage in the litigation, it's simply irrelevant whether someone admits they're true or not. Where is assuming they're true for purposes of stating a claim or not. So to the extent that any of those things are used to color the court's view of the claims, I don't think they matter. I think the court assumes the truth of the statements right now.

THE COURT: Okay.

MR. PACE: Okay. At one point in talking about the 646 defendants, to which there is no reference to, I think I heard Mr. Kajon say something along the lines of, we believe the recipients of funds tracing funds through his global network, and all these folks are part of his global network. So it's possible, and you can create inferences that they received some of these funds.

The problem is, unlike the RICO case in North Carolina, where those entities stayed in on RICO claims solely because they had been pleaded to have received funds, they've got allegations here against the 646 plus that include actual fraud, actual fraudulent transfer, constructive fraud, dishonest services under Bermuda law, conspiracy to injure by unlawful means, and the RICO predicates. And that gets us back to what your questions were to Mr. Kajon about what is the legal basis for charging those folks with those particular claims, both that have a nine B component, which can be relaxed, and which maybe can be relaxed? We're not sure that's an open question.

Maybe it can be relaxed in some things. And the non-9(b) claims, which are just under Rule 8. And I think the only point I would make on that, and this was based on the court's questions to Mr. Kajon. I think that if there is a relaxed standard for pleading 9(b), I think everyone recognizes that there probably is some relaxed. As to

actual fraudulent transfer claims, does it apply to any other claims? I don't think we know or haven't. No one's been able to decide it today. But if it does, whatever that standard is, has got to be higher than Rule 8. So I thought of a good point to make on that and just went blank with the standard.

THE COURT: You were going very well there.

MR. PACE: It's got to be higher than ruling. So I think when I was hearing the court's questions on that, I understood the court.

THE COURT: Yeah, I was asking about ruling.

MR. PACE: Right. Could apply.

THE COURT: Well, and also no more ruling group leading.

MR. KAJON: Right.

MR. PACE: So if they had pleaded that the 646 were merely recipients, maybe that would be a different argument under some of these claims. That's not what they have pleaded. They pleaded much, much more than that. And if you're going to plead much, much more than that against one or 900 defendants, you have to be specific. That's where we say the law lands the RICO defendants' arguments. I think the court thoroughly addressed this in its questioning. I had the same question about the demonstrative. Basically they're saying we've made

particularized allegations against 19 or 20 folks. If you look at the RICO defendants section of the pleadings, I think it's something like 70 or something individual.

THE COURT: You said 90.

MR. PACE: Ninety

MR. KAJON: I'm told I misspoke. And it's only about 35.

MR. PACE: Thirty-five.

THE COURT: Thirty-five, sorry.

MR. PACE: So I knew it was more. I knew it was more than what I saw in that demonstrative.

THE COURT: Yeah, there is.

MR. PACE: Which kind of goes back to the argument I originally made was I don't think the way they pleaded this case, they're actually relying on alter ego to reach RICO defendants. Except Mr. Kajon said no.

THE COURT: He said they are.

MR. PACE: They are.

THE COURT: And vicarious liabilities. Yes, yes.

MR. PACE: And that the point I would simply make on that is the law does not allow that. I think that's all I have in my notes that the court didn't expressly address with Mr. Kajon anything.

THE COURT: Thank you.

MR. PACE: Thank you.

MR. HASH: Good afternoon, Your Honor.

THE COURT: Good afternoon. Good morning.

MR. HASH: Good morning, when we started.

THE COURT: I know. It's okay. It's how these things go.

MR. HASH: Sometimes I will try to be very brief. So I'll start not necessarily in the order that counsel addressed EMAM, but we'll start with the declaratory judgments. Our position coming in was that we didn't think that was justiciable dispute before the court. And having sat here all morning, we still don't believe there's a justiciable dispute that involves us before the court. So that's why we're moving to dismiss those claims.

We think that the dismissal of the NCIC and Axar are that furthers that point. But still, we're not sure what the dispute was as it related to us -- excuse me, the EMAM in the first place.

Turning back to the specific allegations in the complaints, I think it's fair to say that we've heard the specificity that's in the complaint counsel laid out the allegations that we chatted about earlier when we were speaking the allegations again, or that EMAM was created form these SPVs. And then there's the unsupported allegation, we say, inference that they're making that it was used to disaffiliate and to create a false impression

with North Carolina insurance regulators. Well, obviously we dispute that, but now is not the time we get to dispute that factually. But what isn't in dispute is that those allegations do not establish a duty with respect to the debtors.

Those allegations don't establish a duty to disclose. They do not establish a fiduciary duty. They do not establish that imam received a transfer, whether actually fraudulent or constructively fraudulent. They do not establish that EMAM received funds would constitute unjust enrichment. Unjust enrichment would be a predicate, potentially for a constructive trust.

I was the one, Your Honor. You thought someone raised that, Your Honor, I think that was me that was saying that constructive trust is really a remedy rather than a claim. But with respect to EMAM, at least there's no allegation that imam received funds upon which a constructive trust could be imposed. So, Your Honor, simply put, there aren't any allegations that meet the elements of the claims that have been asserted against EMAM.

So for those reasons, we think those claims should go away with respect to piercing the corporate veil, which, as we talked about at length several hours ago, that's separate. We don't think that you can bootstrap piercing the corporate veil, altering your instrumentality to say

that imam committed fraud or received transfers. I think, Your Honor, whether you agree with us, I think you at least understand our points.

But looking though specifically at what it takes to pierce the corporate veil under North Carolina law, the allegations of control. This is one of those points, I think, when counsel agree on the law, but then we sort of get almost to the finish line and then we each take our turn at the end.

But the point, Your Honor, is North Carolina law is there have to be actual non conclusory allegations that the control is such that the entity no longer has a mind, an identity of its own. You can't just say, oh, we control them. How do you control them? If you can't say how, then you're not specific enough. You can't just say generically that company had no will of its own.

Okay, well, that doesn't get there. So there's no allegations, for example, of who the board members of -- well, not board more and LLC, who the members are, who the managers are, if the allegation is just generic control. But if there's anything we've learned, generic allegations aren't enough in federal court. And that's all I have here.

THE COURT: All right. Thank you. All right. Thank you all very much. Needless to say, this is one I'm going to have to (indiscernible) something on. I'm sure you

all understand I'm not ruling from the bench. So what -- sorry, excuse me.

MR. KAJON: I'm sorry, Your Honor. Mr. Pace was asking about the traffic situation. I was trying to fill him in on its UN General Assembly week, so getting to the airport is going to be difficult. Okay.

THE COURT: All right. Thank you. I was going to say is thank you all very much for your arguments. I appreciate the fact that my law clerks get to see excellent lawyers arguing in front of them in person, which is a rare thing, and my interns as well. So thank you for that.

I was saying that I'm going to have to write a decision on this, needless to say, or decisions, because this is not something I would be ruling from the bench on. I'm sure you all understand that even though I've obviously read all the cases cited in your papers and looked at all the papers multiple times, but that's what I'll be doing. So I'm taking this under advisement, and obviously I will issue decision, and that's it. You all may be -- court is now adjourned for the day, and you all may be excused.

MR. KAJON: Thank you.

(Whereupon these proceedings were concluded)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

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